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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

[No. 2018–N–04]

Orders: Reporting by Regulated Entities of Stress Testing Results as of December 31, 2017; Summary Instructions and Guidance

AGENCY: Federal Housing Finance Agency.

ACTION: Orders.

SUMMARY: In this document, the Federal Housing Finance Agency (FHFA) provides notice that it issued Orders, dated March 1, 2018, with respect to stress test reporting as of December 31, 2017, under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Summary Instructions and Guidance accompanied the Orders to provide testing scenarios.

DATES: Effective April 30, 2018. Each Order is applicable March 1, 2018.

FOR FURTHER INFORMATION CONTACT: John Williams, Manager, Financial Performance Reporting, Enterprise Financial Reporting Section, (202) 649–3159, *John.Williams@fhfa.gov;* Stefan Szilagyi, Examination Manager, Office of Risk Modeling, Division of Bank Regulation (202) 649–3515, *Stefan.Szilagyi@fhfa.gov;* Karen Heidel, Assistant General Counsel, Office of General Counsel, (202) 649–3073, *Karen.Heidel@fhfa.gov;* or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054, *Mark.Laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner, including the maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513. These Orders are being issued under 12 U.S.C. 4516(a), which authorizes the Director of FHFA to require by Order that the regulated entities submit regular or special reports to FHFA and establishes remedies and procedures for failing to make reports required by Order. The Orders, through the accompanying Summary Instructions and Guidance, prescribe for the regulated entities the scenarios to be used for stress testing. The Summary Instructions and Guidance also provides to the regulated entities advice concerning the content and format of reports required by the Orders and the rule.

II. Orders, Summary Instructions and Guidance

For the convenience of the affected parties and the public, the text of the Orders follows below in its entirety. The Orders and Summary Instructions and Guidance are also available for public inspection and copying at the Federal Housing Finance Agency's Freedom of Information Act (FOIA) Reading Room at *https://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Reading-Room.aspx* by clicking on ''Click here to view Orders'' under the Final Opinions and Orders heading. You may also access these documents at *http://www.fhfa.gov/SupervisionRegulation/DoddFrankActStressTests.*

The text of the Orders is as follows:

Federal Housing Finance Agency

Order Nos. 2018–OR–B–1, 2018–OR–FNMA–1, and 2018–FHLMC–1

Reporting by Regulated Entities of Stress Testing Results as of December 31, 2017

Whereas, section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary Federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions;

Whereas, FHFA's rule implementing section 165(i)(2) of the Dodd-Frank Act is codified as 12 CFR 1238 and requires that ''[e]ach regulated entity must file a report in the manner and form established by FHFA.'' 12 CFR 1238.5(b);

Whereas, The Board of Governors of the Federal Reserve System issued stress testing scenarios on February 1, 2018; and

Whereas, section 1314 of the Safety and Soundness Act, 12 U.S.C. 4514(a) authorizes the Director of FHFA to require regulated entities, by general or specific order, to submit such reports on their management, activities, and operation as the Director considers appropriate.

Now therefore, it is hereby Ordered as follows:

Each regulated entity shall report to FHFA and to the Board of Governors of the Federal Reserve System the results of the stress testing as required by 12 CFR 1238, in the form and with the content described therein and in the Summary Instructions and Guidance, with Appendices 1 through 12 thereto, accompanying this Order and dated March 1, 2018.

It is so ordered, this the 1st day of March, 2018.

This Order is effective immediately.

Signed at Washington, DC, this 1st day of March, 2018.

Melvin L. Watt, Director,

Federal Housing Finance Agency.

Dated: April 23, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–09072 Filed 4–27–18; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0305; Product Identifier 2013–NM–226–AD; Amendment 39–19259; AD 2018–09–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–11–08, which applied to certain Airbus Model A330–202, –223, –243, –301, –322, and –342 airplanes. AD 2009–11–08 required repetitive special detailed (high frequency eddy current) inspections to detect cracking of the keel beam fitting horizontal flange edge at a certain frame (FR) on the left- and right-hand sides of the fuselage, and repair if necessary. This AD was prompted by a new fatigue and damage tolerance evaluation that concluded the current inspection thresholds and intervals had to be modified. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective May 15, 2018.

We must receive comments on this AD by June 14, 2018.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0305; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2009–11–08, Amendment 39–15918 (74 FR 25404, May 28, 2009) (''AD 2009–11–08''), which applied to certain Airbus Model A330–202, –223, –243, –301, –322, and –342 airplanes. AD 2009–11–08 was prompted by reports of cracks on the left- and right-hand sides between the crossing area of the keel angle fitting and the front spar of the center wing box. AD 2009–11–08 required a special detailed (high frequency eddy current) inspection to detect cracking of the keel beam fitting horizontal flange edge at FR40 on the left- and right-hand sides of the fuselage, and repair if necessary. We issued AD 2009–11–08 to detect and correct cracking on the left- and right-hand sides, between the crossing area of the keel angle fitting and the front spar of the center wing box, which if not corrected, could affect the structural integrity of the airplane.

Since we issued AD 2009–11–08, a new fatigue and damage tolerance evaluation was conducted by the manufacturer. It was concluded that, due to airplane utilization, the current inspection thresholds and intervals had to be modified.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0247, dated October 10, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–202, –223, –243, –301, –322, and –342 airplanes. The MCAI states:

> During the A330 and A340 aeroplane fatigue test, cracks appeared on the right and left sides between the crossing area of the keel angle fitting and the front spar of the Centre Wing Box (CWB). Several modifications were introduced in the fleet in the area of frame (FR) 40 keel angle assembly in order to prevent these cracks. However, the new design caused interference between one fastener and the keel angle which was corrected by further local reprofiling of the keel angle horizontal flange.
>
> This condition, if not detected and corrected, could result in reduced structural integrity of the area.
>
> Prompted by these findings, EASA issued AD 2008–0213 [which corresponds to FAA AD 2009–11–08] to require accomplishment of repetitive special detailed inspection on the horizontal flange of the keel beam in the area of first fastener hole aft of FR40 and, depending on findings, accomplishment of a repair.
>
> Since that [EASA] AD was issued, a new fatigue and damage tolerance evaluation was conducted by Airbus. It was concluded that, due to aeroplane utilisation, the current inspection thresholds and intervals had to be modified.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2008–0213, which is superseded, and redefines the thresholds and intervals.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0305.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0305; Product Identifier 2013–NM–226–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection [new action]	9 work-hours × $85 per hour = $765	$0	$765	$0

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in the MCAI AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–11–08, Amendment 39–15918 (74 FR 25404, May 28, 2009), and adding the following new AD:

2018–09–03 Airbus: Amendment 39–19259; Docket No. FAA–2018–0305; Product Identifier 2013–NM–226–AD.

(a) Effective Date

This AD becomes effective May 15, 2018.

(b) Affected ADs

This AD replaces AD 2009–11–08, Amendment 39–15918 (74 FR 25404, May 28, 2009) (''AD 2009–11–08'').

(c) Applicability

This AD applies to Airbus Model A330–202, –223, –243, –301, –322, and –342 airplanes, certificated in any category, manufacturer serial numbers: 0177, 0181, 0183, 0184, 0188, 0189, 0191, 0195, 0198, 0200, 0203, 0205, 0206, 0209, 0211, 0219, 0222, 0223, 0224, 0226, 0229, 0230, 0231, 0232, 0234, 0238, 0240, 0241, 0244, 0247, 0248, 0249, 0250, 0251, 0253, 0254, and 0255.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of cracks on the left- and right-hand sides between the crossing area of the keel angle fitting and the front spar of the center wing box and by a new fatigue and damage tolerance evaluation that concluded the current inspection thresholds and intervals had to be modified. We are issuing this AD to detect and correct cracking on the left- and right-hand sides between the crossing area of the keel angle fitting and the front spar of the center wing box, which if not corrected, could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the actions at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2013–0247, dated October 10, 2013.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) Refer to MCAI EASA AD 2013–0247, dated October 10, 2013, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0305.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax: 206–231–3229.

(j) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on April 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–08654 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0302; Product Identifier 2013–NM–228–AD; Amendment 39–19258; AD 2018–09–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 99–23–16, which applied to certain Airbus Model A330 and A340 series airplanes. AD 99–23–16 required repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. This AD was prompted by a new fatigue and damage tolerance evaluation that concluded that the current inspection thresholds and intervals had to be more restrictive. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective May 15, 2018.

We must receive comments on this AD by June 14, 2018.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0302; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 99–23–16, Amendment 39–11412 (64 FR 61485, November 12, 1999) (''AD 99–23–16''), which applied to certain Airbus Model A330 and A340 series airplanes. AD 99–23–16 was prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. AD 99–23–16 required repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. We issued AD 99–23–16 to detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing.

Since we issued AD 99–23–16, a new fatigue and damage tolerance evaluation was conducted by the manufacturer. It was concluded that, due to airplane utilization, the current inspection thresholds and intervals had to be more restrictive.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0241, dated October 1, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330 and A340 series airplanes. The MCAI states:

> In order to prevent a damage in the inboard Z profile at the Center Landing Gear (CLG) door fitting location (Frame 49 to 53.2) caused by cracks evidenced during fatigue tests and which could lead to a reduced structural integrity, DGAC France AD 96–056–029(B) and DGAC France AD 96–057–042(B) [which corresponds to FAA AD 99–23–16] were issued to require a repetitive inspection of the inboard Z profile on both Left Hand (LH) and Right Hand (RH) sides.
>
> An optional terminating action of the repetitive inspection of this [EASA] AD exists by modification of the aeroplane in accordance with the instructions of Airbus Service Bulletin (SB) A330–53–3019 or Airbus SB A340–53–4028, as applicable.
>
> Since those [EASA] ADs were issued, in the frame of a new fatigue and damage tolerance evaluation, taking into account the aeroplane utilisation, the threshold and intervals were reassessed. This resulted in the conclusion that, in this specific case, certain thresholds and intervals are more restrictive.
>
> For the reasons described above, this [EASA] AD retains the requirements of both DGAC France AD 96–056–029(B) and DGAC France AD 96–057–042(B), which are superseded, and requires accomplishment of repetitive inspections of the inboard Z profile (LH/RH) within the new thresholds and intervals.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0302.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, we find good

cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0302; Product Identifier 2013–NM–228–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection [new action]	7 work-hours × $85 per hour = $595 per inspection cycle.	$0	$595 per inspection cycle	$0

We estimate the following costs to do any necessary on-condition modification that would be required based on the results of the required actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	13 work-hours × $85 per hour = $1,105	$2,350	$3,455	$0

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 99–23–16, Amendment 39–11412 (64 FR 61485, November 12, 1999), and adding the following AD:

2018–09–02 Airbus: Amendment 39–19258; Docket No. FAA–2018–0302; Product Identifier 2013–NM–228–AD.

(a) Effective Date

This AD becomes effective May 15, 2018.

(b) Affected ADs

This AD replaces AD 99–23–16, Amendment 39–11412 (64 FR 61485, November 12, 1999) (''AD 99–23–16'').

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–301, A330–321, A330–322, A330–341 and A330–342 airplanes, all manufacturer serial numbers, except those on which Airbus modification 42605 has been embodied in production.

(2) Model A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes, all manufacturer serial numbers, except those on which Airbus modification 42605 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a new fatigue and damage tolerance evaluation that concluded that the current inspection thresholds and intervals had to be more restrictive. We are issuing this AD to detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing.

(f) Compliance

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

(g) Required Actions

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the actions at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2013–0241, dated October 1, 2013.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) Refer to MCAI EASA AD 2013–0241, dated October 1, 2013, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0302.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax: 206–231–3229.

(j) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on April 11, 2018.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–08648 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1248; Product Identifier 2017–NM–162–AD; Amendment 39–19257; AD 2018–09–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of cracks found in the main landing gear (MLG) beam forward support fitting. This AD requires repetitive inspections for cracking of the MLG beam forward support fitting, and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 4, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 4, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1248.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1248; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on January 17, 2018 (83 FR 2375). The NPRM was prompted by reports of cracks found in the MLG beam forward support fitting. The NPRM proposed to require repetitive inspections for cracking of the MLG beam forward support fitting, and applicable on-condition actions.

We are issuing this AD to address cracking of the MLG beam forward support fitting on the inboard side of the wing buttock line (WBL) 157 rib. Undetected cracks could lead to a fuel leak, the inability of a principal structural element to carry limit load, or an MLG collapse that could prevent continued safe flight and landing.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. The Boeing

Company had no objections to the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017. The service information describes procedures for repetitive high frequency eddy current (HFEC) inspections for cracking of the MLG beam forward support fitting around the fastener locations common to the rear spar web, below the upper chord on the inboard side of the WBL 157 rib, and applicable on-condition actions (*e.g.,* repair). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 160 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC inspections	Up to 81 work-hours × $85 per hour = Up to $6,885 per inspection cycle.	$0	Up to $6,885 per inspection cycle.	Up to $1,101,600 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. Because the number of work-hours can vary widely, depending on the inspection findings, these figures were not included in the service information.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–09–01 The Boeing Company: Amendment 39–19257; Docket No. FAA–2017–1248; Product Identifier 2017–NM–162–AD.

(a) Effective Date

This AD is effective June 4, 2018.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by the report of a crack indication in the main landing gear (MLG) beam forward support fitting on the inboard side of the wing buttock line (WBL) 157 rib, and multiple reports of similar crack findings on other airplanes. We are issuing this AD to address cracking of the MLG beam forward support fitting on the inboard side of the WBL 157 rib. Undetected cracks could lead to a fuel leak, the inability of a principal structural element to carry limit load, or an MLG collapse that could prevent continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

(1) For Group 1 airplanes identified in Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(2) For Group 2 airplanes identified in Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–57A1334, dated September 26, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on April 11, 2018.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–08646 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 205 and 298

Notification to UAS Operators Proposing To Engage in Air Transportation

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notification of procedures.

SUMMARY: This document sets forth the procedure to seek an air taxi operator exemption to hold economic authority from the Department of Transportation (DOT or Department) for companies proposing to engage in certain air transportation operations with unmanned aircraft systems (UAS).

DATES: April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Chief, Air Carrier Fitness Division (202) 366–5347, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In order to engage directly or indirectly in air transportation,[1] a citizen of the United

[1] ''Air transportation'' means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. Interstate air transportation includes the transportation of property by aircraft for compensation across state,

States [2] is required to hold economic authority from the Department pursuant to 49 U.S.C. 41101, either in the form of a ''certificate of public convenience and necessity'' or in the form of an exemption from the certificate requirement. This authority is separate and distinct from any safety authority required by the Federal Aviation Administration (FAA).

Companies proposing to operate UAS to engage in air transportation, including the delivery of goods for compensation, must first obtain certificate or exemption authority from the Department prior to engaging in the air transportation. The Department intends to use its existing regulatory procedures for processing UAS operators' requests for economic authority. The Department's regulation in 14 CFR part 298 (part 298) provides an exemption to air taxi operators from the certificate requirements of 49 U.S.C. 41101, provided that, among other things, the air carrier is a citizen of the United States as defined in 49 U.S.C. 40102(a)(15), maintains liability insurance required by part 205 of our rules (14 CFR part 205), and registers with the Department.[3] The exemption authority conferred by part 298 is not available to air carriers that operate ''large'' aircraft.[4] For UAS operators looking to transport goods for compensation, an exemption under part 298 is an appropriate form of economic authority. The Department will consider whether granting the exemption is appropriate based on the specific facts and circumstances of each proposed operation.

To become an air taxi operator, operators must submit a registration application (OST Form 4507) and a current aircraft liability insurance certificate (OST Form 6410).[5] A stamped OST Form 4507 with an effective date will be sent to the operator as confirmation of its approved air taxi registration with the Department. Initial registrations must be mailed along with the required filing fee.[6] Air taxis located in the State of Alaska must submit their OST Form 4507 and OST Form 6410 to Federal Aviation Administration, Alaskan Regional Headquarters, AAL–231, 222 West 7th Ave., Box 14, Anchorage, Alaska 99513. All other air taxis must submit their OST Form 4507 and OST Form 6410 to Federal Aviation Administration, AFS–200, Rm. 831, 800 Independence Ave. SW, Washington, DC 20591. Amendments may be filed electronically at *AFS-260-Insurance@faa.gov.* Additional instruction material concerning air taxi registration can also be found in the FAA's air taxi guidance handbook, ''How to Become an On-Demand Air Carrier Operator.''

Signed in Washington, DC, on April 24, 2018.

Joel Szabat,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2018–09057 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–9X–P

international, or U.S. territorial boundaries, or wholly within a U.S. territory or the District of Columbia, or between islands in the State of Hawaii; or the transportation of more than a *de minimis* volume of property moving as part of a continuous journey when any portion of the journey is conducted by aircraft. The assessment of whether property transported wholly within one state is more than a *de minimis* amount or is part of a continuous journey thereby constituting ''air transportation'' is specific to the facts and circumstances of each operation. 49 U.S.C. 40102(a)(5) and 14 CFR 298.2.

[2] A ''citizen of the United States'' includes a corporation organized in the United States that (1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and (2) is under the actual control of citizens of the United States. 49 U.S.C. 40102(a)(15).

[3] *See* 14 CFR 298.3, 298.11, and 298.24.

[4] Large aircraft means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds (*See* 14 CFR 298.2).

[5] Copies of both forms can be found at: *https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs200/afs260/exemptions/.*

[6] Filing fee information is available at the above link and on OST Form 4507.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8527]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities.

The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Catharine, Township of, Blair County ...	420962	October 4, 1973, Emerg; August 1, 1980, Reg; May 2, 2018, Susp.	May 2, 2018	May 2, 2018.
Morris, Township of, Huntingdon County.	421696	August 9, 1982, Emerg; December 4, 1985, Reg; May 2, 2018, Susp.	.....do *.....	Do.
Spruce Creek, Township of, Huntingdon County.	422621	February 18, 1975, Emerg; March 2, 1989, Reg; May 2, 2018, Susp.	.....do	Do.
Tyrone, Township of, Blair County	421395	December 17, 1975, Emerg; June 18, 1980, Reg; May 2, 2018, Susp.	.....do	Do.
Warriors Mark, Township of, Huntingdon County.	421705	November 22, 1977, Emerg; March 2, 1989, Reg; May 2, 2018, Susp.	.....do	Do.

do =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: April 24, 2018.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2018–09073 Filed 4–27–18; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2017–0089; FXES11130900000C6–178–FF09E42000]

Endangered and Threatened Wildlife and Plants; Review of 2017 Final Rule, Greater Yellowstone Ecosystem Grizzly Bears

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Regulatory review; determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our determination that our 2017 final rule to designate the population of grizzly bears in the Greater Yellowstone Ecosystem (GYE) as a distinct population segment and remove that population from the Endangered Species Act's List of Endangered and Threatened Wildlife does not require modification. After considering the best scientific and commercial data available and public comments on this issue received during a regulatory review, we affirm our decision that the GYE population of grizzly bears is recovered and should remain delisted under the Act. Accordingly, the Service does not plan to initiate further regulatory action for the GYE grizzly bear population.

DATES: This determination is made April 30, 2018.

ADDRESSES: Supplementary documents to this determination, including public comments received, can be viewed online at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2017–0089.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, Missoula, MT 59812; by telephone (406) 243–4903. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), are issuing this document as a followup to a prior **Federal Register** document regarding Greater Yellowstone Ecosystem (GYE) grizzly bears published on December 7, 2017 (82 FR 57698). In that **Federal Register** document, we asked for public comments on the impact of a court ruling on our final rule (82 FR 30502, June 30, 2017) designating the GYE population of grizzly bears as a distinct population segment (DPS) and removing that population from the protections of the Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*). Hereafter referred to as the ''Final Rule,'' the June 2017 rule removed the GYE population of grizzly bears from the List of Endangered and Threatened Wildlife (List) in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)).

The referenced court opinion from the United States Circuit Court of Appeals for the D.C. Circuit, *Humane Society of the U.S.* v. *Zinke,* 865 F.3d 585 (D.C. Cir. 2017), addressed the analysis undertaken to designate a DPS from a previously listed entity and remove that DPS from the List (*i.e.,* ''delist'' it). We believe that the 2017 decision to remove the GYE population of grizzly bears from the List complies with the Act, but we decided to consider issues relating to the remainder of the grizzly bear population in the lower 48 States in light of the *Humane Society* opinion. After considering the best scientific and commercial data available regarding the grizzly bear population in the lower 48 States, the species' historical range, and public comments received, the Service has determined that the Final Rule delisting the GYE DPS does not require modification and that the remainder of the population will remain protected under the Act as a threatened species unless we take further regulatory action. We affirm our decision that the GYE population of grizzly bears is recovered and should remain delisted under the Act.

Background

In 1975, the Service listed the grizzly bear (*Ursus arctos horribilis*) in the lower 48 United States as a threatened species under the Act (40 FR 31734, July 28, 1975). In designating the GYE population of grizzly bears as a DPS in 2017 and removing the population from the List, the Service did not reopen the 1975 listing rule through the Final Rule. Rather, the Service identified the GYE grizzly bears as a DPS, concluded that the GYE population was stable, threats were sufficiently ameliorated, and a post-delisting monitoring and management framework had been developed and incorporated into regulatory mechanisms or other operative documents. The best scientific and commercial data available, including our detailed evaluation of information related to the population's trend and structure, indicated that the GYE grizzly bear DPS had recovered and threats had been reduced such that it no longer met the definition of a threatened or endangered species under the Act. The Final Rule became effective on July 31, 2017, and remains in effect, as does the 1975 listing that applies to the lower 48 States population except for the GYE DPS.

On August 1, 2017, the Court of Appeals for the District of Columbia Circuit issued a ruling, *Humane Society of the United States, et al.* v. *Zinke,* 865 F.3d 585 (D.C. Cir. 2017), that affirmed in part the prior judgment of the district court vacating the 2011 delisting rule (76 FR 81666, December 28, 2011) for wolves in the Western Great Lakes (WGL). The 2011 rule designated the gray wolf population in Minnesota, Wisconsin, and Michigan, as well as portions of six surrounding States, as the WGL DPS, determined that the WGL DPS was recovered, and delisted the WGL as a DPS. The D.C. Circuit ruled that, while the Service had the authority to designate a DPS and delist it in the same rule, the Service violated the Act by designating and delisting the WGL wolf DPS without evaluating the implications for the remainder of the listed entity of wolves after delisting the DPS. The court also ruled that the Service failed to analyze the effect of lost historical range on the WGL wolf DPS. In light of this ruling, we asked for public input to aid our consideration of whether the GYE delisting determination should be revisited and what, if any, further analysis was necessary regarding the remaining grizzly bear populations and lost historical range.

Regulatory Approach in the Final Rule

The Service's determination to designate the GYE population as a DPS and delist it, while deciding not to revisit the 1975 listing and leaving it in place for the remainder of the population, was consistent with the Act, with Service policies, and with the Department's longstanding legal interpretation. In section 4(a) of the Act, the Service is authorized to identify and evaluate ''any species.'' (16 U.S.C. 1533(a)(1)). This includes any DPS of any species of vertebrate fish or wildlife. (16 U.S.C. 1532(16)). The Service determines a species' status, *i.e.,* whether it is threatened or endangered, after considering the five factors listed in section 4(a)(1) of the Act. (16 U.S.C. 1533(a)(1)(A)–(E)). The Act imposes a mandatory duty on the Secretary to notify the public of these determinations by maintaining a list. Specifically, section 4(c)(1) of the Act requires the Secretary to ''publish in the **Federal Register** a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species.'' (16 U.S.C.

1533(c)(1)). The Act requires the Secretary, ''from time to time,'' to revise the lists ''to reflect recent determinations, designations, and revisions. . . .'' (16 U.S.C. 1533(c)(1)).

This framework is addressed in detail in a Memorandum Opinion from the Department of the Interior's Office of the Solicitor (M–37018, U.S. Fish and Wildlife Service Authority under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to ''Reflect Recent Determinations,'' December 12, 2008 (M-Opinion)). The M-Opinion explained that, when the Service lists an entire species, the Service may be effectively listing several smaller separately listable entities because, as set forth in Service regulations, listing a particular taxon includes all lower taxonomic units. (M-Opinion, p. 7; *see also* 50 CFR 17.11(g)). The M-Opinion states that ''when identifying and removing a DPS from a broader species listing, . . . [the Service] is separately recognizing an already-listed entity for the first time because it now has a different conservation status than the whole.'' *Id.* As explained above, once that DPS is identified as being separate from the listed whole, the Act requires the Service to update the List. *Id.* at p. 3. The *Humane Society* court considered the M-Opinion and upheld the Solicitor's interpretation of the Act: ''We hold that the Service permissibly concluded that the Endangered Species Act allows the identification of a distinct population segment within an already-listed species, and further allows the assignment of a different conservation status to that segment if the statutory criteria for uplisting, downlisting, or delisting are met.'' *Humane Society,* 865 F.3d at 600.

Some commenters on the December 7, 2017, **Federal Register** document argued that section 4(c)'s requirements to maintain the lists of endangered and threatened species, and to review those lists periodically, prohibit the Service from focusing a regulatory action on a DPS (one part of a broader entity). We reject this view as inconsistent with the Act. As explained above, and in the referenced M-Opinion, section 4(c)(1) of the Act imposes a mandatory duty on the Secretary of the Interior to publish and maintain the lists of all of the species that either the Secretary of the Interior or the Secretary of Commerce has determined to be endangered species or threatened species under section 4(a)(1). The regulations (50 CFR 17.11(a)) contemplate that a single taxonomic species, or components thereof, can be the subject of multiple listing actions under section 4(a)(1) and, therefore, can have more than one entry on the lists. Thus, section 4(c)(1), consistent with section 4(a)(1) and 50 CFR 17.11(a), allows the Secretary of the Interior, through the Service, to document the legal effect of multiple listing entries for a taxonomic species, for instance by including multiple entries for a taxonomic species or by revising a list to reflect that a recent determination superseded all or part of a previous listing action.

Nothing in section 4(c)(2) is to the contrary. It requires the ''Secretary'' to periodically review the species on the List. Thus, at least every 5 years, the lists must be reviewed to determine if a species over which the Secretary has authority should be removed, downlisted from endangered to threatened, or uplisted from threatened to endangered. (16 U.S.C. 1533(c)(2)). This requirement incorporates the listing determination provisions at sections 4(a) and 4(b), and is separate from the requirement to revise the lists in section 4(c)(1). The requirement in section 4(c)(2) that both Secretaries review the species on the lists at least once every 5 years does not limit or add to the section 4(c)(1) requirement for the Secretary of the Interior to revise the lists to reflect recent determinations made by either Secretary. Nothing in the Act requires the Service to undertake a 5-year review of a listed species contemporaneously with taking an action on a lower taxonomic unit within the species. Simply put, sections 4(a)(1) and 4(c)(2) of the Act respectively require both Secretaries to make and periodically review listing determinations with respect to species, subspecies, and DPSs, while section 4(c)(1) creates a separate and independent regulatory obligation for the Secretary of the Interior to revise the lists to reflect listing determinations.

Targeted rulemaking on a DPS, without also reopening prior listing rules or expanding our inquiry to other species, furthers the purposes and objectives of the Act. The approach allows the Service the flexibility to either uplist or downlist a DPS of an already-listed entity without diverting agency resources to determining the overall status of the broader entity. In addition, targeted rulemaking furthers Congress's intent to focus the Act's protections and Service resources on those species that truly qualify as threatened or endangered or that require another change in regulatory status. Focusing on recovered DPSs serves other policy objectives. The principal goal of the Act is to return listed species to a point at which protection under the Act is no longer required. Once a species is recovered, its management should be returned to the States. Our approach furthers that objective. It also creates incentives for Federal–State cooperative efforts to achieve recovery. This approach also avoids needless expenditure of scarce Federal funds on populations that are no longer threatened or endangered.

Following the framework in section 4 of the Act, the Service can determine the status of a DPS consistent with the Service's DPS policy. (61 FR 4722 (February 7, 1996)). We can proceed in different ways when addressing a DPS. For example, we can revisit the listing of a taxonomic species and designate multiple DPSs of that species or we can keep the listing of the taxonomic species in place and reclassify one or more of its DPSs. The latter course is permissible, as a DPS designation identifies a population *within* a taxonomic species or subspecies. (16 U.S.C. 1532(16); defining a DPS as a ''segment of'' a species). Under the Act, designating a DPS does not automatically split or carve up a taxonomic entity, but merely recognizes that a DPS is a population within a taxonomic entity. Thus, focused regulatory action on listing or delisting a DPS is appropriate under the Act and consistent with the Act's purposes of providing the Service with discretion to order priorities and take regulatory action that best serves the policies and purposes of the Act.

In the GYE DPS rulemaking action, the Service designated a valid species, the GYE DPS, that is a segment of the 1975 listed entity, and then applied the five factors to the DPS. The Service determined that the species did not qualify as threatened or endangered. Once the determination regarding the GYE grizzly bear DPS was made, the Secretary had made a decision for purposes of the listing requirements in section 4(c) and he was *required* to modify the list to reflect his new determination. There is no corresponding requirement to modify the original listed entity or to separately assess its status.

By taking regulatory action on the DPS itself and not revisiting the 1975 rulemaking, we did not reopen the lower-48-States listing, which does not now include the GYE DPS. All of the grizzly bears in the lower 48 States remain listed as threatened, except where superseded by the GYE DPS delisting. (82 FR 30503, 30546, 30552, 30623, 30624, 30628, June 30, 2017). We concluded that ''it is not an efficient use of our limited resources to initiate a rulemaking process to revise the lower-

48-States listing. Such a rulemaking would provide no more information about our intentions for grizzly bear recovery than the parameters and documents already guiding our existing grizzly bear recovery program.'' (82 FR 30623, June 30, 2017).

The regulatory action in the Final Rule is consistent with our recovery strategy for all grizzly bears in the coterminous lower 48 States. The Final Rule discusses the recovery strategy for lower-48-States grizzly bears, including the Recovery Plan, which provided management goals for six different grizzly bear populations identified by ecosystems. The Recovery Plan identifies unique demographic recovery criteria for each ecosystem population, and states that it is the Service's goal to delist individual populations as they recover. Thus, the Service's action in delisting the GYE DPS is consistent with the Recovery Plan. The GYE population is the first of the six populations to recover. We note, however, that the population in the Northern Continental Divide Ecosystem may be eligible for delisting in the near future. The Service's data indicates that this population has likely met recovery goals. Other populations may be uplisted, downlisted, or delisted based on their overall health and numbers.

In summary, the Service has appropriately considered the impact of the GYE delisting on the lower-48-States population of grizzly bears. The Final Rule properly implemented the recovery strategy by employing discrete rulemaking with respect to the GYE population of grizzly bears. The Service has the discretion under the Act to engage in targeted rulemaking for a DPS—a species as defined under the Act—and to determine its status based on the five factors set forth in section 4(a)(1). While the Service must revise its lists of endangered and threatened species from time to time to reflect new determinations, section 4(c)(2) imposes no corollary obligation to revisit past rules affecting that species at the same time. The Service can designate a DPS from a prior listing and take action on that DPS without reopening the prior listing. Therefore, we disagree with *Humane Society* to the extent it can be read to impose an obligation with respect to the broader listing when designating a DPS from that listing. However, as explained below, we decided to further consider the impact of the GYE DPS delisting on the lower-48-States grizzly bear population and whether further regulatory action is required for the GYE DPS delisting.

Response to Comments

The Service received more than 3,600 comments on the adequacy of the Final Rule in light of *Humane Society.* A number of comments were outside the scope of our request for public comments. Responsive comments ranged from contentions that the Final Rule is adequate in light of *Humane Society* and further evaluation is not needed to assertions that *Humane Society* renders the Final Rule invalid. Issues and new information raised during the public comment period were incorporated into the analysis presented in this document and were analyzed in more detail in a supporting document. For detailed summaries of and responses to public comments, see the Supporting Documents in Docket No. FWS–R6–ES–2017–0089 at *http://www.regulations.gov.*

Assessment

Commenters responding to the December 7, 2017, **Federal Register** document expressed concern about the protections and status of grizzly bears located outside of the GYE DPS boundaries. We did address these concerns in our Final Rule, explaining that grizzly bears outside the DPS boundaries remain fully protected as a threatened species under the Act, that our recovery strategy will continue to focus on ecosystem-wide recovery zones, and that the DPS delisting does not affect the status or likely recovery of other grizzly bear recovery zone populations (through connectivity, exchange, etc.). However, in view of the *Humane Society* decision and the public comments received, we address these issues in greater detail below, including the status of the GYE DPS, the status of the lower-48-States entity, the impact of the GYE delisting on the lower-48-States entity, the impact of the lower-48-States entity on the GYE DPS, and the impact of lost historical range.

Status of the GYE DPS

In our Final Rule, we found that the GYE grizzly bear population is discrete from other grizzly bear populations and significant to the remainder of the taxon (*i.e., Ursus arctos horribilis*). Therefore, it is a listable entity under the Act and under our DPS Policy (61 FR 4722, February 7, 1996). The Service concluded that the GYE grizzly bear population has recovered to the point at which protection under the Act is no longer required. The best scientific and commercial data available indicate that the GYE grizzly bear DPS is not endangered or threatened throughout all or a significant portion of its range. We are aware of no information that would warrant revisiting this determination.

Status of the Lower-48-States Entity

The 1975 final rule listed grizzly bears in the lower 48 States as threatened (40 FR 31734, July 28, 1975). In the Final Rule, we noted that the grizzly bears occurring outside of the boundary of the GYE DPS in the lower 48 States remain threatened and therefore protected by the Act (82 FR 30503, 30546, 30552, 30623, 30624, 30628, June 30, 2017). The Service has the discretion to revisit this determination at a later time, although it is not required now as explained above, and we may do so as we consider other populations within the lower-48-States entity.

Impact of GYE Delisting on the Lower-48-States Entity

As explained above, the Final Rule did not reopen the 1975 listing rule, although it no longer covers the GYE DPS. The 1975 listing remains valid. Although the ESA does not require an analysis of the Final Rule's impact on the 1975 listing, we conduct that analysis here in response to public comments. It is possible that delisting a DPS of an already-listed species could have negative effects on the status of the remaining species. For example, removing the Act's protections from one population could impede recovery of other still-listed populations (82 FR 30556–30557, June 30, 2017). For grizzly bear, delisting the GYE DPS could have implications for the remaining populations that have not yet achieved recovery. One possible implication could be that delisted grizzly bears inside the GYE DPS may be subject to increased mortality, which could reduce grizzly bear dispersal into other recovery zones. A map of grizzly bear recovery areas is available at *https://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/GBdistributions.jpg.* While natural connectivity between recovery zones is not a recovery criterion for any of the recovery zones, it is one of our long-term objectives (USFWS 1993, p. 24, entire) as it would likely speed the achievement of recovery goals and increase genetic variability, and any increase in mortality inside the GYE DPS could limit such benefits.

The Bitterroot Ecosystem (BE) could be impacted most by changes in dispersal from the GYE DPS because it is within potential dispersal distance (120 km (75mi)) from the GYE DPS (Blanchard and Knight 1991, pp. 54–55; Proctor et al. 2004, p. 1113), as well as the Northern Continental Divide Ecosystem (NCDE) (35 km (21 mi);

Costello 2018, *in litt.*). Although the BE is unoccupied and isolated from other populations, there is a potential that dispersal from the GYE DPS could lead to the development of a grizzly population in the BE. Federal and State management agencies that make up the Interagency Grizzly Bear Study Team accounted for potential connectivity to the BE by extending a portion of the Demographic Monitoring Area (DMA) boundary to the western edge of the GYE DPS boundary to include suitable grizzly bear habitat in the Centennial Mountains (82 FR 30504, June 30, 2017). The Centennial Mountains lie inside both the GYE DPS and DMA and provide an east-west corridor of suitable habitat from the GYE to the BE ecosystem. The extended DMA is still a significant distance from the BE, but the mortality limits are in effect inside the DMA, ensuring that mortalities will be limited in this area of potential connectivity between the two ecosystems if dispersal were to occur. However, despite protections of the Act, we have no evidence of grizzly bears successfully dispersing from the GYE into the BE. Therefore, we conclude that any effect on dispersal in this area due to the Final Rule would likely be minimal. It is more likely that the BE will be recolonized by the NCDE population, as the distance between the two ecosystems is shorter and there is more suitable habitat in the interstitial area.

Connectivity between the GYE DPS and the NCDE has the greatest potential due to proximity (110 km (68 mi)) of currently occupied range in both ecosystems (Peck *et al.* 2017, p. 2). The Tobacco Root mountain range may be a particularly important dispersal pathway between these two ecosystems (Peck *et al.* 2017, p. 15). The Tobacco Roots fall in the northwest corner of the GYE DPS, outside the DMA and associated mortality limits. Delisting of the GYE population may reduce the potential for GYE grizzly bears to disperse through the Tobacco Roots (or other pathways) to the NCDE, or for NCDE grizzly bears to disperse into the GYE due to potential increased mortality inside the GYE DPS. However, genetic isolation is not a concern for the NCDE or the GYE. Due to its relatively large population size, high level of heterozygosity, and continued connection with Canada, the NCDE does not need immigrants from the GYE to reach recovery (Kendall *et al.* 2009, pp. 8, 12; Costello *et al.* 2016, p. 2). To date, we have no evidence of grizzly bears successfully dispersing from the GYE into the NCDE or any other recovery zone, despite protections of the Act. Genetic analysis confirms that the GYE DPS remains isolated, with no evidence of recent immigrants from other populations (Haroldson *et al.* 2010, p. 8; Proctor *et al.* 2012, pp. 16–17). Furthermore, no recent observations of grizzly bears in the Tobacco Roots have been confirmed either through non-invasive surveys (Lukins *et al.* 2004, p. 171) or surveillance of observation reports (K. Frey 2017, *pers. comm.*).

The Selkirk Ecosystem and Cabinet-Yaak Ecosystem are currently occupied and connected to grizzly bear populations in Canada. They, along with the North Cascades Ecosystem, are also beyond any known expected dispersal distance from the GYE. Therefore, any potential increased mortality in the GYE would not impact these populations.

Mortality limits for independent females and males and dependent young in the GYE DMA, adopted into regulation by each State, are in place and will reduce potential for impacts to dispersal. Regulatory mechanisms are in place and adequately address threats in a manner necessary to maintain a recovered population into the foreseeable future (82 FR 30528–30535, June 30, 2017). The mortality limits were calculated as those needed to maintain the population at a stable level, and take into account all sources (human-caused, natural, unknown) of mortality. They are calculated as annual mortality rates on a sliding scale depending on the annual population size estimate. Idaho, Montana, and Wyoming have committed to these mortality limits in the 2016 Conservation Strategy (YES 2016) and in a Memorandum of Agreement (MOA; Wyoming Game and Fish Commission *et al.* 2016, entire) and are set forth in State regulations. The agreed-upon mortality limits will maintain the population within the DMA around the long-term average population size for 2002–2014 of 674 grizzly bears, consistent with the revised demographic recovery criteria (USFWS 2017, entire) and the MOA (Wyoming Game and Fish Commission *et al.* 2016, entire). Montana's State management plan includes a long-term goal of allowing grizzly bear populations in southwestern and western Montana to reconnect through the maintenance of non-conflict grizzly bears in areas between the ecosystems. The State of Montana has indicated that, while discretionary mortality may occur, the State will manage discretionary mortality to retain the opportunity for natural movements of grizzly bears between ecosystems (MFWP 2013, p. 9; 82 FR 30556, June 30, 2017).

Mortality limits do not exist for areas outside the DMA within the GYE DPS; however, we do not expect grizzly bears to establish self-sustaining populations there due to a lack of suitable habitat, land ownership patterns, and the lack of traditional, natural grizzly bear foods. Instead, grizzly bears in these peripheral areas will likely always rely on the GYE grizzly bear population inside the DMA as a source population (82 FR 30510–30511, June 30, 2017). The current distribution of grizzly bears within the GYE DPS includes areas outside of the DMA, and, as such, grizzly bears in these areas may be exposed to higher mortality. However, grizzly bears throughout the GYE DPS are classified as a game species by all three affected States and the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation, and, as such, cannot be taken without authorization by State or Tribal wildlife agencies (82 FR 30530, June 30, 2017; W.S. 23–1–101(a)(xii)(A); W.S. 23–3–102(a); MCA 87–2–101(4); MCA 87–1–301; MCA 87–1–304; MCA 87–5–302; IC 36–2–1; IDAPA 13.01.06.100.01(e); IC 36–1101(a); Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 18–21; MFWP 2013, p. 6; Eastern Shoshone and Northern Arapahoe Tribes 2009, p. 9; WGFD 2016, p. 9; YES 2016a, pp. 104–116).

The primary potential impact of delisting the GYE DPS on the status of the listed species is the potential to limit dispersal from the GYE into other unrecovered ecosystems due to increased mortality within the DPS. However, we do not expect mortalities to increase significantly because the vast majority of suitable habitat inside the GYE DPS is within the DMA where bears are subject to mortality limits. Grizzly bears remain protected by the Act outside the DPS. Additionally, food storage orders on public lands provide measures to limit mortality and promote natural connectivity through a reduction in conflict situations. (82 FR 30536, 30580, June 30, 2017). Despite these protections, successful dispersal events remain rare and play a very minor role in population dynamics because of the large amounts of unsuitable habitat between ecosystems. The probability of successful dispersal is low despite recent expansion of the GYE and NCDE populations (Peck *et al.* 2017, p. 15); accordingly, we have no recent evidence of successful dispersal from the GYE into any other ecosystem. However, populations in both ecosystems are currently expanding into new areas, and the GYE is expanding beyond the DMA.

If populations continue to expand, decreasing the distance between populations, the likelihood of successful immigration will increase (Peck *et al.* 2017, p. 15). In short, we find that impacts of delisting the GYE DPS on the lower-48-States entity are minimal, do not significantly impact the lower-48-States entity, and do not affect the recovery of the GYE grizzly bears. This analysis does not warrant any revision or amendment of the Final Rule.

Finally, we believe there is sufficient evidence that the currently listed species (grizzly bears in the lower 48 States) contains more than one DPS. For example, preliminary data indicates the NCDE population is a DPS; the Service intends to evaluate that population to determine if it qualifies for DPS designation and, if so, consider its status. The Act's protections will continue outside the DPS boundaries until subsequent regulatory action is taken on the 1975 listing rule or specific DPSs within the boundaries of the entity listed in 1975. We believe this is the most precautionary and protective approach to grizzly bear recovery.

Impact of the Lower-48-States Entity on the GYE DPS

The lower-48-States entity that remains listed may have implications for the delisted GYE DPS. Throughout the range of the grizzly bear in the lower 48 States, human-caused mortality is limited and habitat is managed to promote recovery, which may increase the potential for the remaining grizzly bear population to act as a source population for the delisted GYE DPS. The lower 48 States contain several populations that are increasing in number and distribution, and may, at some point, provide dispersers into the GYE DPS. Although connectivity is not necessary for the current genetic health of the GYE grizzly bear population, it would deliver several benefits to the GYE, including increases in genetic diversity and increased long-term viability of the population (82 FR 30535–30536, 30544, 30581, 30610–30611, June 30, 2017). However, while successful dispersal is possible, the likelihood is low due to large areas of unsuitable habitat between populations. Currently, the effective population size and heterozygosity levels in the GYE are adequate to maintain genetic health of the GYE population for at least the next several decades (Miller and Waits 2003, p. 4338; Kamath *et al.* 2015, entire). The States have committed to a variety of measures to maintain genetic diversity. Wyoming has acknowledged that translocation of bears may take place in the future if necessary (WGFD 2016, p. 13). As described above, Montana has committed to managing discretionary mortality to retain the opportunity for grizzly bears to migrate between ecosystems. (MFWP 2013, p. 9; 82 FR 30556, June 30, 2017). Therefore, while the protected status of the lower-48-States grizzly bear population theoretically could engender several beneficial effects on the GYE DPS, those benefits will likely be minimal in the near term.

Impact of Lost Historical Range

When reviewing the current status of a species, we can also evaluate the effects of lost historical range on the species. As noted above, the Final Rule did not revisit the 1975 rule or perform a status review of grizzly bears in the lower 48 States. Therefore, the Final Rule was not required to assess the loss of historical range on the lower-48-States entity. However, in response to public comments suggesting that a historical range analysis for the lower-48-States population is required, we elaborate on the analysis of historical range and the status of the lower-48-States entity as previously addressed in the Final Rule.

Ursus arctos horribilis is a widely recognized subspecies of grizzly bear that historically existed throughout much of continental North America, including most of western North America from the Arctic Ocean to central Mexico (Hall 1984, pp. 4–9; Trevino and Jonkel 1986, p. 12). The continental range of the grizzly bear began receding with the arrival of Europeans to North America, with rapid extinction of populations from most of Mexico and from the central and southwestern United States and California (Craighead and Mitchell 1982, p. 516). Current populations continue to thrive in the largely unsettled areas of Alaska and northwestern Canada, while populations within the contiguous 48 States are much more fragmented.

Grizzly bears in the lower 48 States experienced immense losses of range primarily due to human persecution and reduction of suitable habitat (82 FR 30508, June 30, 2017). Prior to the arrival of Europeans, the grizzly bear occurred throughout much of the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska (Roosevelt 1907, pp. 27–28; Wright 1909, pp. vii, 3, 185–186; Merriam 1922, p. 1; Storer and Tevis 1955, p. 18; Rausch 1963, p. 35; Herrero 1972, pp. 224–227; Schwartz et al. 2003, pp. 557–558). Pre-settlement population levels for the western contiguous United States are believed to have been in the range of 50,000–100,000 animals (Servheen 1989, pp. 1–2; Servheen 1999, pp. 50–51; USFWS 1993, p. 9). In the 1800s, with European settlement of the American West and government-funded bounty programs aimed at eradication, grizzly bears were shot, poisoned, and trapped wherever they were found (Roosevelt 1907, pp. 27–28; Wright 1909, p. vii; Storer and Tevis 1955, pp. 26–27; Leopold 1967, p. 30; Koford 1969, p. 95; Craighead and Mitchell 1982, p. 516; Servheen 1999, pp. 50–51). Many historical habitats were converted into agricultural land (Woods *et al.* 1999, entire), and traditional food sources such as bison and elk were reduced, eliminated, or replaced with domestic livestock, such as cattle, sheep, chickens, goats, pigs, and agricultural products from bee hives and crops.

The resulting declines in range and population were dramatic. We have estimated that the range and numbers of grizzly bears were reduced to less than 2 percent of their former range in the lower 48 States and numbers by the 1930s, approximately 125 years after first contact with European settlers (USFWS 1993, p. 9; Servheen 1999, p. 51). Of 37 grizzly bear populations present in 1922 within the lower 48 States, 31 were extirpated by the time of listing in 1975, and the estimated population in the lower 48 States was 700–800 animals (Servheen 1999, p. 51).

For the Final Rule and this review, we considered historical range of grizzly bears circa 1850. We determined that this timeframe is appropriate for measuring grizzly bear range because it is a period for which published faunal records document grizzly bear range, descriptions of grizzly bear occurrence, and/or local extirpation events (Mattson and Merrill 2002, p. 1125). It precedes the major distribution changes in response to excessive human-caused mortality and habitat loss (Servheen 1999, p. 51). We define the physical boundaries of the relevant historical range as the lower 48 States, primarily west of the Mississippi River. Approximately 50,000–100,000 grizzly bears were historically distributed in one large contiguous area throughout portions of at least 17 western States (*i.e.,* Washington, Oregon, California, Idaho, Montana, Wyoming, Nevada, Colorado, Utah, New Mexico, Arizona, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas (Servheen 1989, pp. 1–2; Servheen 1999, pp. 50–51; USFWS 1993, p. 9)).

Significant loss of historical range has resulted in fewer individuals distributed in several small, fragmented, and isolated populations. Today, grizzly

bears in the lower 48 States primarily exist in 4 populations spanning portions of 4 States. Total numbers are estimated at 1,810 individuals (700 in the GYE DPS and 1,110 additional grizzly bears in the lower-48-States entity). Grizzly bear range in the lower 48 States collapsed into small, fragmented, and isolated populations by the mid-1900s (Mattson and Merrill 2002, p. 1134). These alterations have increased the vulnerability of lower-48-States grizzly bears to a wide variety of threats that would not be at issue without such massive range reduction. Several of these threats were identified in the 1975 original listing (40 FR 31734, July 28, 1975), including range loss and isolation, the construction of roads and trails into formerly secure areas, human persecution, and increasing numbers of livestock on national forests.

We considered these threats thoroughly in the Final Rule (82 FR 30520–30535, June 30, 2017), along with other vulnerabilities caused by loss of historical range, such as changes in available food sources, carrying capacity, changes in metapopulation structure, and reductions in genetic diversity and gene flow (see discussion below). Aside from informing the current status of and threats to the GYE DPS, the lost historic range within the United States is informative only for future rulemakings or regulatory actions in the lower 48 States, as the Service did not undertake regulatory action for grizzly bears outside the GYE DPS boundaries.

Impact of Lost Historical Range on the GYE DPS

Humane Society held that the WGL wolf delisting did not adequately consider the impact of lost historical range on the current threats facing the WGL wolf DPS, including reduced genetic variability and vulnerability to catastrophic events. The Final Rule for the GYE DPS thoroughly addressed the current threats to the grizzly bear in light of the lost historical range. We further explain the analysis in the Final Rule in response to public comments.

Grizzly bears historically occurred throughout the area of the GYE DPS (Stebler 1972, pp. 297–298), but they were less common in prairie habitats (Rollins 1935, p. 191; Wade 1947, p. 444). Today many of these habitats are no longer biologically suitable for grizzly bears (82 FR 30510–12, 30551, 30558, June 30, 2017). Grizzly bear presence in these drier, grassland habitats was associated with rivers and streams where grizzly bears used bison carcasses as a major food source (Burroughs 1961, pp. 57–60; Herrero 1972, pp. 224–227; Stebler 1972, pp. 297–298; Mattson and Merrill 2002, pp. 1128–1129). Most of the shortgrass prairie on the east side of the Rocky Mountains has been converted into agricultural land (Woods et al. 1999, entire), and high densities of traditional food sources are no longer available due to land conversion and human occupancy of urban and rural lands (82 FR 30510, 30551, 30558, June 30, 2017). Traditional food sources such as bison and elk have been reduced and replaced with domestic livestock such as cattle, sheep, chickens, goats, pigs, and bee hives, which can become anthropogenic sources of prey for grizzly bears (82 FR 30510, 30551, 30558, 30624, June 30, 2017).

Range reduction within the GYE DPS boundary has resulted in potential threats specific to isolated and small populations, including genetic health, changes in food resources, climate change, and catastrophic events (82 FR 30533–44, June 30, 2017). Small and isolated populations are susceptible to declines in genetic diversity, which can result in population-limiting effects such as inbreeding, genetic abnormalities, birth defects, low reproductive and survival rates, and susceptibility to extinction (Frankham 2005, entire). However, current levels of genetic diversity in the GYE DPS are capable of supporting healthy reproductive and survival rates, as evidenced by normal litter size, no evidence of disease, high survivorship, an equal sex ratio, normal body size and physical characteristics, and a relatively constant population size within the GYE (van Manen 2016, *in litt.*). We concluded that genetic diversity does not constitute a threat to the GYE DPS (82 FR 30535–36, 30609–11, June 30, 2017).

Changes in availability of highly energetic food resources as a result of lost historical range, such as whitebark pine, army cutworm moths, ungulates, and cutthroat trout could influence grizzly bear reproduction, survival, or mortality risk (Mealey 1975, pp. 84–86; Pritchard and Robbins 1990, p. 1647; Craighead et al. 1995, pp. 247–252). Grizzly bears are dietary generalists, consuming more than 266 distinct plant and animal species, and are resilient to changes in food resources (Servheen and Cross 2010, p. 4; Gunther et al. 2014, p. 1). Additionally, whitebark pine loss has not caused a negative population trend or declines in vital rates (IGBST 2012, p. 34; van Manen 2016a, in litt.), and there is no known relationship between mortality risk or reproduction and any other food (Schwartz et al. 2010, p. 662). We concluded in the Final Rule that changes in food resources do not constitute a threat to the GYE DPS (82 FR 30536–40, June 30, 2017).

Climate change may result in a number of changes to grizzly bear habitat, denning times, shifts in the abundance and distribution of natural food sources, and changes in fire regimes. Changes in denning times may increase the potential for conflicts with humans; however, regulatory mechanisms are in place to limit human-caused mortality (see discussion above under *Impact of GYE Delisting on the Lower-48-States Entity*). Grizzly bears have shown resiliency to changes in vegetation resulting from fires (Blanchard and Knight 1996, p. 121), and diets are flexible enough to absorb shifts in food distributions and abundance (Servheen and Cross 2010, p. 4; IGBST 2013, p. 35). We concluded in the Final Rule that climate change is unlikely to pose a threat to the GYE DPS (82 FR 30540–42, June 30, 2017).

The GYE DPS is vulnerable to various catastrophic and stochastic events, such as fire, volcanic activity, earthquakes, and disease. Most of these types of events are unpredictable and unlikely to occur within the foreseeable future, would likely cause only localized and temporary impacts that would not threaten the GYE DPS (82 FR 30542, June 30, 2017), or have never been documented to affect mortality in grizzly bears (disease: IGBST 2005, pp. 34–35; Craighead et al. 1988, pp. 24–84) (82 FR 30533–30534, June 30, 2017).

While range reduction has reduced both numbers of bears and amount of available habitat, the GYE currently supports a population of grizzly bears that meets our definition of recovered, and does not meet our definition of an endangered or threatened species (82 FR 30514, June 30, 2017). Further, we found that potential threats resulting from lost historical range are manageable through conflict prevention, management of discretionary mortality, and the large amount of suitable, secure habitat within the GYE and are not a threat to the GYE grizzly bear DPS now or likely to become a threat in the foreseeable future (82 FR 30544, June 30, 2017). Our regulatory review therefore confirmed that the Service appropriately analyzed the historic range and current status/threats to the GYE DPS, as required under the Act.

Conclusion

After considering the GYE Final Rule in light of the *Humane Society* opinion, along with the best available scientific information, we affirm the determinations of our Final Rule: The

GYE grizzly bear population is discrete from other grizzly bear populations and significant to the remainder of the taxon (*i.e., Ursus arctos horribilis*) and, therefore, a listable entity under the Act in accordance with our DPS Policy; the GYE population has recovered to the point at which protection under the Act is no longer required; and the best scientific and commercial data available indicate that the GYE grizzly bear DPS is not endangered or threatened throughout all or a significant portion of its range. Finally, we determined in the Final Rule, and affirm here, that we will not revisit the 1975 final rule, and grizzly bears, outside the GYE DPS, in the lower 48 States remain listed as threatened. Accordingly, the Service does not plan to initiate further regulatory action for the GYE grizzly bear population, or for the lower 48 States population at this time.

References Cited

A complete list of all reference cited herein is available at *https://www.regulations.gov* in Docket No. FWS–R6–ES–2017–0089, or upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

This document is published under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2018.

James W. Kurth

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–09095 Filed 4–27–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG193

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2018 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2018, through 2400 hrs, A.l.t., December 31, 2018.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 144 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018). The Regional Administrator has determined that the 2018 ITAC for Greenland turbot in the Aleutian Islands subarea of the BSAI is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2018 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for Greenland turbot in the Aleutian Islands subarea of the BSAI as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as April 5, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 25, 2018.

Kelly L. Denit,

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

[FR Doc. 2018–09018 Filed 4–27–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 83
Monday, April 30, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–17–0080; NOP–17–09]

RIN 0581 AD78

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances for 2017 NOSB Recommendations (Livestock and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA's) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule proposes to: Add elemental sulfur to the National List for use in organic livestock production; and, reclassify potassium acid tartrate from a non-agricultural substance to an agricultural substance and require the organic form of the ingredient when commercially available.

DATES: Comments must be received by June 29, 2018.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Robert Pooler, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252.

Instructions: All submissions received must include the docket number AMS–NOP–17–0080; NOP–17–09, and/or Regulatory Information Number (RIN) 0581–AD78 for this rulemaking. When submitting a comment, clearly indicate the proposed rule topic and section number to which the comment refers. In addition, comments should clearly indicate whether the commenter supports the action being proposed and also clearly indicate the reason(s) for the position. Comments can also include information on alternative management practices, where applicable, that support alternatives to the proposed amendments. Comments should also offer any recommended language change(s) that would be appropriate to the position. Please include relevant information and data to support the position such as scientific, environmental, manufacturing, industry, or impact information, or similar sources. Only relevant material supporting the position should be submitted. All comments received will be posted without change to *http://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling.

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

This proposed rule would amend the National List to implement two NOSB recommendations on two amendments to the National List. These recommendations were submitted to the Secretary on November 7, 2017. Table 1 summarizes the proposed changes to the National List based on these NOSB recommendations.

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

Substance	National List section	Proposed rule action
Elemental sulfur	§ 205.603(b)	Add to National List.
Potassium acid tartrate	§ 205.605 & § 205.606	Reclassify listing and move within National List.

II. Overview of Proposed Amendments

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

§ 205.603 Synthetic substances allowed for use in organic livestock production.

This proposed rule would add one substance to § 205.603, synthetic substances allowed for use in organic livestock production.

Elemental Sulfur

The proposed rule would amend the National List to add elemental sulfur for use as a parasiticide to treat livestock and livestock housing. Table 2 illustrates the proposed listing.

TABLE 2—PROPOSED RULE ACTION FOR ELEMENTAL SULFUR

Current rule:	N/A.
Proposed rule action:	Add elemental sulfur to § 205.603(b).

On March 1, 2016, AMS received a petition [1] to add elemental sulfur to the National List in § 205.603 for use as a topical pesticide treatment in organic livestock production to repel mites, fleas, and ticks from livestock and livestock living quarters. Mites, fleas, and ticks are vectors of livestock diseases and under favorable conditions may heavily infest livestock and livestock living quarters. Elemental sulfur is dusted on and rubbed into the feathers and hair of livestock and applied to interior surfaces of livestock housing. The USDA organic regulations allow elemental sulfur for use in organic crop production as an insecticide (including mite control), § 205.601(e); as a plant disease control, § 205.601(i); and as a plant or soil amendment, § 205.601(j).

At its November 2, 2017 public meeting, the NOSB considered the petition to add elemental sulfur to the National List for use in organic livestock production and received public comment. In its review, the NOSB also considered a March 2017 technical evaluation report (technical report) on elemental sulfur [2] that described its manufacture, industry uses, regulation, and chemical properties.

In consideration of the petition, technical report, and public comments, the NOSB determined that the use of elemental sulfur as a topical pesticide for organic livestock satisfies OFPA evaluation criteria for National List substances and recommended adding elemental sulfur to § 205.603 as an external parasiticide in organic livestock production.[3] AMS has reviewed and proposes to address this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the National List by adding elemental sulfur to § 205.603(b) as an external parasiticide. This would permit the use of elemental sulfur on livestock and livestock housing when preventive measures have failed (§ 205.238).[4]

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

This proposed rule would move one substance, currently listed in § 205.605, to § 205.606.

Potassium Acid Tartrate

The proposed rule would amend the National List to reclassify potassium acid tartrate from a non-agricultural substance listed in § 205.605(b) to an agricultural substance listed in § 205.606.

TABLE 3—PROPOSED RULE ACTION FOR POTASSIUM ACID TARTRATE

Current rule:	§ 205.605(b), potassium acid tartrate.
Proposed rule action:	Remove potassium acid tartrate from § 205.605(b) and insert potassium acid tartrate under § 205.606.

Potassium acid tartrate is currently allowed as a synthetic substance for use in organic handling. The U.S. Food and Drug Administration (FDA) allows potassium acid tartrate to be used as a leavening agent, pH control agent, or antimicrobial agent. Other uses that are permitted by the FDA include as an anticaking agent, a formulation aid, a humectant, a stabilizer and thickener, and a surface-active agent (21 CFR 184.1077). Potassium acid tartrate has been on the National List since October 2002. During its November 2017 public meeting, the NOSB considered the proposal to reclassify potassium acid tartrate as an agricultural substance. Specifically, the NOSB considered new information in an updated January 2017 technical report on potassium acid tartrate.[5] This report described how potassium acid tartrate is a byproduct of the wine making process and is extracted with water. Prior to and during this meeting, the NOSB also received and considered public comment on the proposal. The NOSB determined that potassium acid tartrate meets the definition of an ''agricultural product'' in § 205.2 of the USDA organic regulations because it is derived from an agricultural product (grapes) and does not undergo a chemical change during extraction.[6] This is consistent with the USDA organic regulations and the NOP guidance on classification of agricultural and nonagricultural materials.[7] Therefore, the NOSB recommended reclassifying potassium acid tartrate as an agricultural substance and moving it to section 205.606 of the National List. This action would require organic handlers who use potassium tartrate to source an organic form of the ingredient. If the ingredient is not commercially available,[8] the nonorganic form may be used.

Consistent with the NOSB recommendation, this proposed rule would amend § 205.605 by removing potassium acid tartrate from § 205.605(b) and inserting it in § 205.606.

III. Related Documents

On May 30, 2017, a Notice was published in the **Federal Register** (82 FR 24659) announcing the fall 2017 NOSB meeting. The purpose of the meeting was to deliberate on recommendations on substances petitioned as amendments to the National List.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend

[1] Elemental sulfur petition: *https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned.* Under ''S.''

[2] The technical report for elemental sulfur is available on the AMS website, organized in alphabetical order: *https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned.*

[3] NOSB elemental sulfur recommendation: *https://www.ams.usda.gov/sites/default/files/media/LSSulfurFinalRec.pdf.*

[4] Section 205.238(b) permits organic producers to use synthetic medications which are allowed for use in § 205.603 when preventive practices are inadequate.

[5] 2017 potassium acid tartrate technical report: *https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned.* Under ''P.''

[6] The USDA organic regulations define ''agricultural product'' as: ''Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketing in the United States for human or livestock consumption.''

[7] NOP 5033, Classification of Materials: *https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.*

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

the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations sets forth the National List petition process. The current petition process (81 FR 12680, March 10, 2016) can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

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

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

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

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

AMS has considered the economic impact of this proposed rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the U.S. would be considered small entities. According to the 2016 Certified Organic NASS Survey, 13,954 certified organic farms in the U.S. reported sales of organic products and total farmgate sales in excess of $7.5 billion.[9] Based on that data, organic sales average $541,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $700,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database there are 9,633 certified handlers in the U.S.[10] The Organic Trade Association's 2017 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 82 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $15 million. The costs for certification generally range from $500 to $3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of additional substances in organic crop or livestock production and organic handling. This action would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. AMS concludes that the economic impact of this addition, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

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

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

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

[9] U.S. Department of Agriculture, National Agricultural Statistics Service. September 2017. Certified Organic Survey, 2016 Summary. *http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-09-20-2017_correction.pdf.*

[10] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/.* Accessed on March 23, 2018.

under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

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

D. Executive Order 13175

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

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add one substance to the National List and to reclassify one substance on the National List. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

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

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

PART 205—NATIONAL ORGANIC PROGRAM

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

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.603 by redesignating paragraphs (b)(2) through (b)(8) as (b)(3) through (b)(9) and adding new paragraph (b)(2) to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(b) * * *

(2) Elemental sulfur—for treatment of livestock and livestock housing.

* * * * *

§ 205.605 [Amended]

■ 3. Amend § 205.605 paragraph (b) by removing ''Potassium acid tartrate.''

■ 4. Amend § 205.606, by redesignating paragraphs (o) through (t) as (p) through (u) and adding new paragraph (o) to read as follows:

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

* * * * *

(o) Potassium acid tartrate.

* * * * *

Dated: April 24, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2018–08991 Filed 4–27–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0224; Product Identifier 2018–NE–01–AD]

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GEnx–1B engines. This proposed AD was prompted by a report of a center vent tube (CVT) failure leading to a loss of oil pressure and subsequent in-flight engine shutdown. This proposed AD would require removal of the Air/Oil Extension Ducts, part numbers (P/N) 2332M85P01 or 2331M25G03. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0224; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington MA; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0224; Product Identifier 2018–NE–01–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We were prompted to issue this NPRM based upon a report of a CVT failure leading to a loss of oil pressure and subsequent in-flight engine shutdown. During the event, the CVT failed due to oil leaking into the fan mid shaft, resulting in coking on the seal

assembly and overpressurization of the CVT. This condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

Related Service Information

We reviewed GE GEnx–1B Service Bulletin (SB) 72–0331 R01, dated August 21, 2017. The SB describes procedures for replacing air/oil extension ducts, P/N 2332M85P01 or 2331M25G03, with an extension duct eligible for installation.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removal of an affected extension duct and replacing it with a part eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 97 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of Extension Duct	4 work-hours × $85 per hour = $340	$16,270	$16,610	$1,611,170

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2018–0224; Product Identifier 2018–NE–01–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GEnx–1B64, –1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67/P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2 engines with Air/Oil Extension Duct, part number (P/N) 2332M85P01 or 2331M25G03, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of a center vent tube (CVT) failure. We are issuing this AD to prevent failure of the CVT. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

At the next engine shop visit after the effective date of this AD, remove air/oil extension ducts, P/N 2332M85P01 or 2331M25G03, and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(1) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(2) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent maintenance.

(i) Installation Prohibition

After the effective date of this AD, do not install an Air/Oil Extension Duct, P/N 2332M85P01 or 2331M25G03, into a fan mid shaft Assembly.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington MA; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, MA, on April 25, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–09010 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0306; Product Identifier 2018–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 2000 airplanes. This proposed AD was prompted by the manufacturer revising the airplane maintenance manual (AMM) maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0306; Product Identifier 2018–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0236, dated November 30, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FALCON 2000 airplanes. The MCAI states:

> The airworthiness limitations for Dassault Falcon 2000 aeroplanes, which are approved by EASA, are currently defined and published in Aircraft Maintenance Manual (AMM) Airworthiness Limitations Section (ALS) Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* reduced controllability of the airplane].
>
> EASA previously issued [EASA] AD 2012–0156 [which corresponds to FAA AD 2014–03–12 Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12'')], requiring the actions described in Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876) at Revision 17.
>
> Since that AD was issued, Dassault published Revision 18 of Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876), containing new and/or more restrictive maintenance tasks and introducing (among other changes) the Corrosion Prevention and Control Programme.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0156, which is superseded, and requires accomplishment of the actions specified in Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876) at Revision 18 * * *.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306.

Relationship Between Proposed AD and AD 2014–03–12

This NPRM would not supersede AD 2014–03–12. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2014–03–12.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, of Chapter 5, Maintenance Planning Document, of the Dassault Falcon 2000 Maintenance Manual. This service information describes instructions applicable to airworthiness and safe life limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

This AD requires revisions to certain operator maintenance documents. Compliance with these revisions are required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Difference Between the MCAI and This Proposed AD

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Dassault Aviation maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 195 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although this figure may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2018–0306; Product Identifier 2018–NM–039–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952,

December 21, 2010) (''AD 2010–26–05'') and AD 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12'').

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 2000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by manufacturer revisions to the airplane maintenance manual (AMM) that introduce new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced controllability of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, of Chapter 5, Maintenance Planning Document, of the Dassault Falcon 2000 Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, of Chapter 5, Maintenance Planning Document, of the Dassault Falcon 2000 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later; except as required by paragraphs (g)(1) through (g)(3) of this AD. The term ''LDG'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, Revision 19, dated November 2017, means total flight cycles.

(1) For Task 30–11–09–350–801 identified in the service information specified in the introductory text of paragraph (g) of this AD, the initial compliance time is the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the earlier of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD.

(A) Prior to the accumulation of 2,400 total flight hours or 2,000 total flight cycles, whichever occurs first.

(B) Within 2,400 flight hours or 2,000 flight cycles after April 7, 2014 (the effective date of AD 2014–03–12), whichever occurs first.

(ii) Within 30 days after April 7, 2014 (the effective date of AD 2014–03–12).

(2) For Task 52–20–00–610–801–01 identified in the service information specified in the introductory text of paragraph (g) of this AD, the initial compliance time is within 24 months after April 7, 2014 (the effective date of AD 2014–03–12).

(3) The limited service life of part number F2MA721512100 is 3,750 total flight cycles on the part or 6 years since the manufacturing date of the part, whichever occurs first.

(h) No Alternative Actions or Intervals

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

(i) Terminating Actions for Other ADs

(1) Accomplishing the actions required by this AD terminates all of the requirements of AD 2014–03–12.

(2) Accomplishment of the actions required by paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05 for all Dassault Aviation Model FALCON 2000 airplanes.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0236, dated November 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 19, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–08757 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0259; Product Identifier 2018–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) AE 2100D2A and AE 2100D3 model turboprop engines and AE 3007A2 model turbofan engines. This proposed AD was prompted by the possibility of a low-cycle fatigue failure on certain turbine wheels. This proposed AD would require removing the affected turbine wheels at the next engine shop visit or before reaching the new reduced life limit, whichever occurs first, and replacing them with parts eligible for installation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact Rolls-Royce Corporation, 450 South Meridian Street, Indianapolis, IN 46225; phone: 317–230–3774. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0259; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0259; Product Identifier 2018–NE–09–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We were prompted to issue this NPRM based upon a report of the discovery of steel inclusion in the production process at an RRC forging supplier. Ultrasonic inspection at the forging supplier revealed steel impurities could be introduced into turbine wheels during forging. Analysis and testing by RRC of these wheels indicated that, because of imperfections, these turbine wheels could not be operated safely up to their published life limits. The affected turbine wheels include 1st-stage gas generator turbine wheels, installed on AE 2100D2A and AE 2100D3 model turboprop engines, and 1st-stage high-pressure turbine (HPT) wheels, installed on AE 3007A2 turbofan engines.

This condition, if not addressed, could result in uncontained turbine wheel release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed RRC Alert Service Bulletin (ASB) AE 2100D2–A–72–090, Revision 1, dated July 11, 2014, and RRC ASB AE 2100D3–A–72–286, Revision 1, dated July 11, 2014 (one document, referred to herein as ''RRC ASB AE 2100D2–A–72–090/AE 2100D3–A–72–286''), and RRC ASB AE 3007A–A–72–419, Revision 2, dated December 4, 2017. RRC ASB AE 2100D2–A–72–090/AE 2100D3–A–72–286 provides removal and replacement instructions and a new life limit for the affected 1st-stage gas generator turbine wheels installed on RRC AE 2100D2A and AE 2100D3 model turboprop engines. ASB AE 3007A–A–72–419 provides removal and replacement instructions and a new life limit for 1st-stage HPT wheels installed on RRC AE 3007A2 model turbofan engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD requires the removal and replacement of the affected turbine wheels at the next engine shop visit or before reaching their new life limit, whichever occurs first.

Costs of Compliance

We estimate that this proposed AD affects nine engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace turbine wheels	0 work-hours × $85 per hour = $0	$160,829	$160,829	$1,447,461

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Roll-Royce Corporation (Type Certificate previously held by Allison Engine Company): Docket No. FAA–2018–0259; Product Identifier 2018–NE–09–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) Rolls-Royce Corporation (RRC) AE 2100D2A turboprop engines with 1st-stage gas generator turbine wheels, part number (P/N) 23089692, with serial numbers (S/Ns) MW65898 or MW68310, installed.

(2) RRC AE 2100D3 turboprop engines with 1st-stage gas generator turbine wheels, P/N 23088906, with S/Ns MW65895, MW65896, MW65900, MW65901, MW65903, MW68305, MW68306, MW68307, MW68312, MW68314, MW68316, MW68318, or MW68319 installed.

(3) RRC AE 3007A2 turbofan engines with 1st-stage high-pressure turbine (HPT) wheels, P/N 23088906, with S/Ns MW65894, MW68303, or MW68315 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by the possibility of steel inclusions in the turbine wheel forging. We are proposing this AD to prevent a low-cycle fatigue failure of a 1st-stage gas generator turbine wheel or 1st-stage HPT wheel. The unsafe condition, if not addressed, could result in uncontained turbine wheel release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Remove the affected 1st-stage gas generator turbine wheel and replace with a part eligible for installation at the next engine shop visit or before exceeding the life limit of 4,800 engine cycles, whichever occurs first, in accordance with the Accomplishment Instructions, Paragraph 2, of RRC Alert Service Bulletin (ASB) AE 2100D2–A–72–090, Revision 1, dated July 11, 2014, and RRC ASB AE 2100D3–A–72–286, Revision 1, dated July 11, 2014 (one document).

(2) Remove the affected 1st-stage HPT wheel and replace with a part eligible for installation at the next engine shop visit or before exceeding the life limit of 5,600 engine cycles, whichever occurs first, in accordance with the Accomplishment Instructions, Paragraph 2, of RRC ASB AE 3007A–A–72–419, Revision 2, dated December 4, 2017.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance is not an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Kyri Zaroyiannis, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

(2) For service information identified in this AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Indianapolis, IN 46225; phone: 317–230–3774. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, MA, on April 25, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–09012 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0359; Product Identifier 2018–NM–040–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. This proposed AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0359; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0359; Product Identifier 2018–NM–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0027, dated January 30, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance instructions for the Dassault Mystère-Falcon 900 aeroplanes, which are approved by EASA, are currently defined and published in the Dassault Mystère-Falcon 900 [airplane maintenance manual] AMM chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* reduced structural integrity of the airplane].
>
> Consequently, EASA issued AD 2016–0127 [which corresponds to FAA AD 2017–19–03 Amendment 39–19033 (82 FR 43166, September 14, 2017) (''AD 2017–19–03'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Mystère-Falcon 900 AMM chapter 5–40 Revision 22.
>
> Since that [EASA] AD was issued, Dassault issued Revision 23 of the Dassault Mystère-Falcon 900 AMM chapter 5–40, which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0127, which is superseded, and requires accomplishment of the actions specified in Revision 23 of the Dassault Mystère-Falcon 900 AMM chapter 5–40 * * *.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0359.

Relationship Between Proposed AD and Certain Other ADs

This NPRM would not supersede AD 2017–19–03. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2017–19–03. Accomplishment of the proposed actions would also terminate all requirements of AD 2016–01–16, Amendment 39–18376 (81 FR 3320, January 21, 2016) (''AD 2016–01–16'') and certain requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05''), for Dassault Aviation Model MYSTERE–FALCON 900 airplanes.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, Revision 23, dated September 2017, of the Dassault Aviation Falcon 900 Maintenance Manual. This service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations Section (ALS) of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

This proposed AD requires revisions to certain operator maintenance documents. Compliance with these revisions are required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Difference Between the MCAI and This Proposed AD

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Dassault Aviation maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-

registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 65 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2018–0359; Product Identifier 2018–NM–040–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05''); AD 2016–01–16, Amendment 39–18376 (81 FR 3320, January 21, 2016) (''AD 2016–01–16''); and AD 2017–19–03, Amendment 39–19033 (82 FR 43166, September 14, 2017) (''AD 2017–19–03'').

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 900 airplanes, all serial numbers; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 23, dated September 2017, of the Dassault Aviation Falcon 900 Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, Revision 23, dated September 2017, of the Dassault Aviation Falcon 900 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later. The term ''LDG'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total flight cycles. The term ''M'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means months.

(h) No Alternative Actions or Intervals

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

(i) Terminating Actions for Other ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 2017–19–03 and AD 2016–01–16.

(2) Accomplishing the actions required by paragraph (g) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model MYSTERE–FALCON 900 airplanes.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0027, dated January 30, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0359.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 20, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–09006 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0360; Product Identifier 2018–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0360; Product Identifier 2018–NM–009–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0205, dated October 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300–600 series airplanes. The MCAI states:

> The airworthiness limitations for the Airbus A300–600 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A300–600 Airworthiness Limitations Section (ALS) documents. The Damage Tolerant Airworthiness Limitation Items are specified in the A300–600 ALS Part 2. These instructions have been identified as mandatory for continuing airworthiness.

Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane].

EASA previously issued [EASA] AD 2016–0218 [which corresponds to FAA AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07'')] to require compliance with the maintenance requirements and associated airworthiness limitations defined in Airbus A300–600 ALS Part 2 Revision 01, Variation 1.1 and Variation 1.2.

Since that [EASA] AD was issued, new or more restrictive maintenance requirements and airworthiness limitations were approved by the EASA. Consequently, Airbus published Revision 02 of the A300–600 ALS Part 2, compiling all ALS Part 2 changes approved since previous Revision 01.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0218, which is superseded, and requires accomplishment of the actions specified in Airbus A300–600 ALS Part 2 Revision 02.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360.

Relationship Between Proposed AD and AD 2018–01–07

This NPRM would not supersede AD 2018–01–07. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2018–01–07.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. This service information describes airworthiness limitations applicable to the DT ALIs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Difference Between the MCAI and This Proposed AD

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 125 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2018–0360; Product Identifier 2018–NM–009–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

This AD affects AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07'').

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. The initial compliance times for doing the tasks are at the applicable times specified in Airbus A300–600 ALS, Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

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

(i) Terminating Actions for AD 2018–01–07

Accomplishing the actions required by this AD terminates all requirements of AD 2018–01–07.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) AD 2017–0205, dated October 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360.

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

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 20, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–09005 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0235; Product Identifier 2018–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 620–15 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 620–15 turbofan engines. This AD limits service life of the low-pressure compressor (LPC) fan blades based on the number of dry-film lubricant (DFL) treatments. The AD was prompted by reports of LPC fan blade retention lug failures. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33–7086–1883; fax: +49 (0) 33–7086–3276.

You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0235; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *Robert.Green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0235; Product Identifier 2018–NE–08–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0013, dated January 17, 2018 (referred to after this as the MCAI), to address the unsafe condition on these products. The MCAI states:

> Fractures of low pressure compressor (LPC) fan blade retention lugs were reported on engines subjected to a high number of Dry Film Lubrication (DFL) treatments. Subsequent investigation determined that, as a consequence, the retention lugs of the affected LPC (fan) blades had been exposed to excessive high stress cycles.
>
> This condition, if not detected or corrected, could lead to failure of LPC fan blade retention lug(s), high vibration, reduced thrust, or in-flight shut down, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Rolls Royce Deutschland (RRD) issued Alert Non-Modification Service Bulletin (NMSB) TAY–72–A1834 (hereafter referred to as 'the NMSB') to provide identification and replacement instructions.
>
> For the reasons described above, this [EASA] AD requires determination of number of DFL treatments applied to the LPC fan blades and, based on that determination, replacement. This AD also introduces a maximum allowable number of DFL treatments applicable to the LPC fan blades.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0235.

Related Service Information Under 1 CFR Part 51

We reviewed RRD ALERT Non-Modification Service Bulletin (NMSB) TAY–72–A1834, dated November 17, 2017. The Alert NMSB describes procedures for reviewing the maintenance records and replacing the LPC fan blade with a serviceable part. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We reviewed RRD NMSB TAY–70–1050, Revision 9, dated July 14, 2010. This NMSB defines a basic engine life management program suitable for Tay engines in aircraft that are engaged in non-airline operations.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require reviewing the engine maintenance records and replacing the LPC fan blade with a serviceable part if the DFL treatment limit is exceeded.

Requirements of the Proposed AD

This proposed AD would require reviewing the engine maintenance records and replacing the LPC fan blade with a serviceable part if the DFL treatment limit is exceeded.

Costs of Compliance

We estimate that this proposed AD affects 25 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Record search to establish number of LPC blade DFL applications.	1.5 work-hours × $85 per hour = $127.50	0	$127.50	$3,187.50
Lost life for a LPC blade set and replacement of blades.	4.0 work-hours × $85 per hour = $340	16,550	16,890	422,250

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG; Docket No. FAA–2018–0235; Product Identifier 2018–NE–08–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 620–15 turbofan engines with low-pressure compressor (LPC) fan blades, having part numbers (P/Ns) JR30649, JR31702, JR31983, JR33863, or JR33864, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of LPC fan blade retention lug failures. We are issuing this AD to prevent failure of the LPC fan blade retention lug. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 30 days after the effective date of this AD, determine the number of DFL treatments that were applied to the LPC fan blade by reviewing the maintenance records or using an alternative method in steps C or N, as applicable, of the Accomplishment Instruction, paragraph 3, of RRD ALERT Non-Modification Service Bulletin (NMSB) TAY–72–A1834, dated November 17, 2017.

(2) Depending on the results of the records review, do the following, as applicable:

(i) If the number of DFL treatments is fewer than 13, mark the LPC fan blade dovetail root with a suffix code during the next scheduled LPC fan blade removal using steps H or R, as applicable, of the Accomplishment Instruction, paragraph 3, of RRD ALERT NMSB TAY–72–A1834, dated November 17, 2017.

(ii) If the number of DFL treatments is 13 or more, replace the affected LPC fan blade with a part eligible for installation within 500 flight hours after effective date of this AD.

(h) Installation Prohibition

After the effective date of this AD, do not install an affected LPC fan blade on any engine unless it has been determined that the LPC fan blade has had fewer than 13 DFL treatments and has been marked in accordance with the instructions of RRD ALERT NMSB TAY–72–A1834, dated November 17, 2017.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *Robert.Green@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0013, dated January 17, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0235.

(3) For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33–7086–1883; fax: +49 (0) 33–7086–3276. You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on April 25, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–09011 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0357; Product Identifier 2018–NM–035–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 2000EX airplanes. This proposed AD was prompted by the manufacturer revising the airplane maintenance

manual (AMM) maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 14, 2018.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0357; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0357; Product Identifier 2018–NM–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0021, dated January 29, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 2000EX airplanes. The MCAI states:

> The airworthiness limitations for Dassault Falcon 2000EX aeroplanes, which are approved by EASA, are currently defined and published in Aircraft Maintenance Manual (AMM) Airworthiness Limitations Section (ALS) Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* reduced structural integrity of the airplane].
>
> EASA previously issued [EASA] AD 2012–0157 [which corresponds to FAA AD 2014–16–12 Amendment 39–17936 (79 FR 52187, September 3, 2014) (''AD 2014–16–12'')], requiring the actions described in Dassault Falcon 2000EX AMM Chapter 5–40 (DGT 113877) at Revision 07.
>
> Since that [EASA] AD was issued, Dassault published Revision 11 of Dassault Falcon 2000EX AMM Chapter 5–40 (DGT 113877), containing new and/or more restrictive maintenance tasks and introducing (among other changes) an operational test for Cursor Control Device.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0157, which is superseded, and requires accomplishment of the actions specified in the Dassault Falcon 2000EX AMM Chapter 5–40 (DGT 113877) at Revision 11 * * *.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0357.

Relationship Between Proposed AD and AD 2014–16–12

This NPRM would not supersede AD 2014–16–12. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2014–16–12.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, of the Dassault Falcon 2000EX Maintenance Manual. This service information describes instructions applicable to airworthiness and safe life limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

This AD requires revisions to certain operator maintenance documents. Compliance with these revisions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Dassault Aviation maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD. This proposed AD therefore would apply to Dassault Aviation Model FALCON 2000EX airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before January 15, 2018 (the effective date of the ALS revision identified in this proposed AD). Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 181 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2018–0357; Product Identifier 2018–NM–035–AD.

(a) Comments Due Date

We must receive comments by June 14, 2018.

(b) Affected ADs

This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'') and AD 2014–16–12 Amendment 39–17936 (79 FR 52187, September 3, 2014) (''AD 2014–16–12'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000EX airplanes, certificated in any category; with an original certificate of airworthiness or original export certificate of airworthiness issued on or before January 15, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by manufacturer revisions to the airplane maintenance manual (AMM) that introduce new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, of the Dassault Falcon 2000EX Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, of the Dassault Falcon 2000EX Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later; except for task number 52–20–00–610–801–01, the initial compliance time is within 24 months after October 8, 2014 (the effective date of AD 2014–16–12). The term ''LDG'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 11, dated November 2017, means total flight cycles.

(h) No Alternative Actions or Intervals

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

(i) Terminating Actions for Other ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates all of the requirements of AD 2014–16–12.

(2) Accomplishing the actions specified in paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05 for Dassault Aviation Model FALCON 2000EX airplanes.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0021, dated January 29, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0357.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 19, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–08758 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0291; Airspace Docket No. 18–AGL–10]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Ionia, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Ionia County Airport, Ionia, MI. The FAA is proposing this action as a result of an airspace review due to the decommissioning of the Lansing VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 14, 2018.

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 (800) 647–5527. You must identify FAA Docket No. FAA–2018–0291; Airspace Docket No. 18–AGL–10, 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 7400.11B, 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 7400.11B at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 upward from 700 feet above the surface at Ionia County Airport, Ionia, MI, to support instrument flight rule operations.

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–2018–0291/Airspace Docket No. 18–AGL–10.'' 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.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from a 7.4-mile radius) at Ionia County Airport, Ionia, MI. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Lansing VOR as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Ionia, MI [Amended]

Ionia County Airport, MI
(Lat. 42°56′17″ N, long. 85°03′38″ W)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ionia County Airport.

Issued in Fort Worth, Texas, on April 23, 2018.

Christopher L. Southerland,

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

[FR Doc. 2018–08959 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0310; Airspace Docket No. 18–ASW–7]

RIN 2120–AA66

Proposed Revocation of Class E Airspace; Clarendon, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace extending upward from 700 feet above the surface at Clarendon Municipal Airport, Clarendon, TX. The FAA is proposing this action due to the cancellation of the instrument procedures at the airport making this airspace no longer necessary.

DATES: Comments must be received on or before June 14, 2018.

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 (800) 647–5527. You must identify FAA Docket No. FAA–2018–0310; Airspace Docket No. 18–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 7400.11B, 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 7400.11B at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 support the removal Class E airspace extending upward from 700 feet above the surface at Clarendon Municipal Airport, Clarendon, TX, as the airspace is no longer required.

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–2018–0310/Airspace Docket No. 18–ASW–7.'' 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.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by removing the Class E airspace extending upward from 700 feet above the surface at Clarendon Municipal Airport, Clarendon, TX.

The FAA is proposing this action due to the cancellation of the instrument procedures at the airport making the airspace no longer necessary.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Clarendon, TX [Removed]

Issued in Fort Worth, Texas, on April 23, 2018.

Christopher L. Southerland,

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

[FR Doc. 2018–08960 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0242]

RIN 1625–AA00

Safety Zone; Blazing Paddles 2018 SUP Race; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Cuyahoga River during the Blazing Paddles Stand Up Paddle Race. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 30, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0242 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09–SMB–SECBuffalo-WWM@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, Purpose, and Legal Basis

On February 20, 2018, Share the River notified the Coast Guard that it would be conducting a 5.8-mile Stand up Paddleboard Race from 9:00 a.m. to 11:00 a.m. on June 23, 2018, in conjunction with the annual Burning River Ramble. The race will begin just downriver from the Cleveland Rowing Foundation docks at position 41°29′36″ N and 081°42′13″ W, and travel 2.9 miles upriver to the turnaround point just the past Jefferson Ave Bridge at position 41°28′52″ N and 081°40′33″ W, and return to the starting point. The Captain of the Port Buffalo (COTP) has determined that potential hazards associated with a Stand up Paddleboard Race would be a safety concern for anyone within a 2.9-mile stretch of the Cuyahoga River.

The purpose of this rulemaking is to ensure the safety of vessels and racers on the navigable waters within the above stated points, before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone enforced intermittently, from 8:30 a.m. to 11:30 a.m. on June 23, 2018. The safety zone will cover all navigable waters at the

start point at position 41°29′36″ N and 081°42′13″ W to the turnaround point at position 41°28′52″ N and 081°40′33″ W on the Cuyahoga River Cleveland OH. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:00 a.m. to 11:00 a.m. Paddleboard Race. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would not be able to safely transit around this safety zone, which would impact a small designated area of the Cuyahoga River. However, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone lasting 3 hours that would prohibit entry into the waters contained within a 2.9-mile stretch of the Cuyahoga River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1, of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under 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 proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and

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

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

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T09–0242 to read as follows:

§ 165.T09–0242 Safety Zone; Blazing Paddles 2018 SUP Race; Cuyahoga River, Cleveland, OH.

(a) *Location.* The safety zone will encompass all waters of the Cuyahoga River in Cleveland, OH, beginning at position 41°29′36″ N and 081° 42′13″ W to the turnaround point at position 41°28′52″ N and 081°40′33″ (NAD 83).

(b) *Enforcement Period.* This rule is effective from 8:30 a.m. until 11:30 a.m. on June 23, 2018.

(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 Buffalo or his 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 Buffalo or his designated on-scene representative.

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

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his 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 Buffalo, or his on-scene representative.

Dated: April 23, 2018.

J.S. Dufresne,

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

[FR Doc. 2018–08979 Filed 4–27–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[EPA–HQ–OA–2018–0259; FRL–9977–40–ORD]

RIN 2080–AA14

Strengthening Transparency in Regulatory Science

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a regulation intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation. In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

DATES: Comments must be received on or before May 30, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2018–0259, 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://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Tom Sinks, Office of the Science Advisor, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 564–0221; email address: *staff_osa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Submitting CBI. Do not submit information that you consider to be CBI electronically through *https://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address using U.S. Postal Service: U.S. Environmental Protection Agency, EPA Docket Center, EPA–HQ–OA–2018–0259, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. For other methods of delivery, see *https://www.epa.gov/dockets/where-send-comments-epa-dockets*.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the

outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information

A. Does this action apply to me?

This proposed regulation does not directly regulate any entity outside the federal government. However, any entity interested in EPA's regulations may be interested in this proposal. This proposal may be of particular interest to entities that conduct research and other scientific activity that is likely to be relevant to EPA's regulatory activity.

B. What action is the Agency taking?

This notice solicits information and comment from the public on a proposed regulation intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that, for the science pivotal to its significant regulatory actions, EPA will ensure that the data and models underlying the science is publicly available in a manner sufficient for validation and analysis. In this notice, EPA solicits comment on this proposal and how it can best be implemented in light of existing law and prior statements of policy that have called for increasing public access to data and influential scientific information used to inform federal regulation. EPA has not previously implemented these policies and guidance in a robust and consistent manner. This proposal will help ensure that EPA is pursuing its mission of protecting public health and the environment in a manner that the public can trust and understand.

C. What is the Agency's authority for taking this action?

The Agency proposes to take this action under authority of the statutes it administers, including provisions providing general authority to promulgate regulations necessary to carry out the Agency's functions under these statutes and provisions specifically addressing the Agency's conducting of and reliance on scientific activity to inform those functions, including Clean Air Act sections 103, 301(a), 42 U.S.C. 7403, 7601(a); Clean Water Act sections 104, 501, 33 U.S.C. 1254, 1361; Safe Drinking Water Act sections 1442, 1450(a)(1), 42 U.S.C. 300j–1, 300j–9(a)(1); Resource Conservation and Recovery Act sections 2002(a)(1), 7009, 42 U.S.C. 6912(a)(1), 6979; Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311, 42 U.S.C. 9616, 9660; Emergency Planning and Community Right-To-Know Act section 328, 42 U.S.C. 11048; Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a), 7 U.S.C. 136r(a), 136w; and Toxic Substances Control Act, as amended, section 10, 15 U.S.C. 2609. This action is also consistent with requirements in the Administrative Procedure Act to ensure public participation in the rulemaking process. As noted in Section III below, EPA solicits comment on whether additional or alternative sources of authority are appropriate bases for this proposed regulation.

II. Background

The best available science must serve as the foundation of EPA's regulatory actions.[1] Enhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA's regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions. By better informing the public, the Agency in enhancing the public's ability to understand and meaningfully participate in the regulatory process.[2] In applying the best available science to its regulatory decision-making, EPA must comply with federal transparency and data integrity laws, and must also ensure that its decision-making is marked by independence, objectivity, transparency, clarity, and reproducibility. Although these standards are important in all scientific endeavors, they are of paramount importance when the government relies on science to inform its significant regulatory decisions that will affect the public. When EPA develops significant regulations using public resources, including regulations for which the public is likely to bear the cost of compliance, EPA should ensure that the data and models underlying scientific studies that are pivotal to the regulatory action are available to the public. This proposed rule is designed to increase transparency in the preparation, identification, and use of science in policymaking.

This proposed rule is consistent with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers to disclose to the public the bases for agency rules and to rationally execute and adequately explain agency actions.[3] This proposed rule is also consistent with Executive Orders 13777[4] and 13783,[5] and the focus on transparency in OMB's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies*[6] (the Guidelines) and OMB

[1] See Exec. Order No. 13563, 76 FR 3821 (Jan. 21, 2011). ''Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.''

[2] See Memorandum for the Heads of Executive Department and Agencies on Scientific Integrity (Mar. 9, 2009). ''If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.''

[3] EPA has the authority to establish policies governing its reliance on science in the administration of its regulatory functions. Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA's use non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass'n* v. *EPA,* 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass'ns* v. *EPA,* 283 F.3d 355, 372 (D.C. Cir. 2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.

[4] Exec. Order No. 13777, 82 FR 12285 (Mar. 1, 2017). Regulatory reform efforts shall attempt to identify ''those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility.''

[5] Exec. Order No. 13783, 82 FR 16093 (Mar. 31, 2017). ''It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.''

[6] February 22, 2002 (67 FR 8453) *OMB's Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information* (2002) *https://www.federalregister.gov/documents/*

Continued

Memorandum 13–13: Open Data Policy—Managing Information as an Asset.[7] It builds upon prior EPA actions [8] in response to government-wide data access and sharing policies, as well as the experience of other federal agencies in this space.[9] In particular, this proposal applies concepts and lessons learned from its ongoing implementation of the 2016 Plan to Increase Access to Results of EPA-Funded Scientific Research to significant regulatory decisions. The proposed rule takes into consideration the policies or recommendations of third party organizations who advocated for open science.[10] These policies are informed by the policies recently adopted by some major scientific journals,[11] spurred in some part by the ''replication crisis.'' [12]

Today, EPA is proposing to establish a clear policy for the transparency of the scientific information used for significant regulations: Specifically, the dose response data and models that underlie what we are calling ''pivotal regulatory science.'' ''Pivotal regulatory science'' is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.

With this notice, EPA is soliciting public comment on a proposed regulation designed to provide a mechanism to increase access to dose response data and models underlying pivotal regulatory science in a manner consistent with statutory requirements for protection of privacy and confidentiality of research participants, protection of proprietary data and confidential business information, and other compelling interests. The proposal takes comment on how to ensure that, over time, more of the data and models underlying the science that informs regulatory decisions (over and above the dose response data and models underlying ''pivotal regulatory science'') is available to the public for validation [13] in a manner that honors legal and ethical obligations to reduce the risks of unauthorized disclosure and re-identification. As such this proposed regulation is designed to change agency culture and practices regarding data access so that the scientific justification for regulatory actions is truly available for validation and analysis.

Regulatory determinations based on science should describe and document any assumptions and methods used, and should address variability and uncertainty. Where available and appropriate, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments. EPA's regulatory science should be consistent with the Office of Management and Budget's *Final Information Quality Bulletin for Peer Review.*[14] Robust peer review plays a critical role in independently validating key findings and ensuring that the quality of published information meets the standards of the scientific and technical community.

In addition, this proposed regulation is designed to increase transparency of the assumptions underlying dose response models. As a case in point, there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects. The use of default models, without consideration of alternatives or model uncertainty, can obscure the scientific justification for EPA actions. To be even more transparent about these complex relationships, EPA should give appropriate consideration to high quality studies that explore: A broad class of parametric concentration-response models with a robust set of potential confounding variables; nonparametric models that incorporate fewer assumptions; various threshold models across the exposure range; and spatial heterogeneity. EPA should also incorporate the concept of model uncertainty when needed as a default to optimize low dose risk estimation based on major competing models, including linear, threshold, and U-shaped, J-shaped, and bell-shaped models.

Across EPA programs, much of the science that informs regulatory actions is developed outside the Agency. It is the charge of regulators to ensure that key findings are valid and credible, as required by OMB's Guidelines [15] (which apply to ''third party'' information—*e.g.,* non-government scientific research—if the agency use of that information provides the appearance of representing agency views). Using scientific information that can be independently validated will lead to better outcomes, and strengthen public confidence in the health and environmental protections underpinning EPA's regulatory actions.

EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.[16] Nothing in the proposed rule compels

2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information.

[7] *Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset* (*https://project-open-data.cio.gov/policy-memo/*). ''Specifically, this Memorandum requires agencies to collect or create information in a way that supports downstream information processing and dissemination activities. This includes using machine-readable and open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts. It also includes agencies ensuring information stewardship through the use of open licenses and review of information for privacy, confidentiality, security, or other restrictions to release.''

[8] Plan to Increase Access to Results of EPA-Funded Scientific Research; EPA Open Government Plan 4.0; Open Data Implementation Plan; EPA's Scientific Integrity Policy; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.

[9] For example, see related policies from the National Science Foundation, National Institute of Science and Technology, the National Institutes of Health; and the U.S. Census Bureau, which provides secure access to data from several agencies in an environment that protects against unauthorized disclosure (*https://www.census.gov/fsrdc*).

[10] These include policies and recommendations from: The Administrative Conference of the United States' Science in the Administrative Process Project; National Academies' reports on *Improving Access to and Confidentiality of Research Data, Expanding Access to Research Data,* and *Access to Research Data in the 21st Century;* the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center's Science for Policy Project.

[11] For example, see related policies from the *Proceedings of the National Academy of Sciences, PLOS ONE, Science,* and *Nature.*

[12] See: *https://www.nature.com/articles/s41562-016-0021; http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0020124; http://science.sciencemag.org/content/343/6168/229.long; https://www.economist.com/news/leaders/21588069-scientific-research-has-changed-world-now-it-needs-change-itself-how-science-goes-wrong.*; *http://stm.sciencemag.org/content/8/341/341ps12.full.*

[13] EPA has not consistently followed previous EPA policy (*e.g,* EPA's Scientific Integrity Guidance, referenced above) that encouraged the use of non-proprietary data and models.

[14] *https://www.whitehouse.gov/wp-content/uploads/2017/11/2005-M-05-03-Issuance-of-OMBs-Final-Information-Quality-Bulletin-for-Peer-Review-December-16-2004.pdf.*

[15] February 22, 2002 (67 FR 8453) *OMB's Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information* (2002) *https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information.*

[16] See examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau.

the disclosure of any confidential or private information in a manner that violates applicable legal and ethical protections. Other federal agencies have developed tools and methods to de-identify private information for a variety of disciplines.[17] The National Academies have noted that simple data masking, coding, and de-identification techniques have been developed over the last half century and that ''Nothing in the past suggests that increasing access to research data without damage to privacy and confidentiality rights is beyond scientific reach.'' [18] More recently, both the National Academies and the Bipartisan Commission on Evidence Based Policy [19] have discussed the challenges and opportunities for facilitating to secure access to confidential data for non-government analysts.

Considering the breadth of dose response data and models used in the development of significant EPA regulations, the requirements for availability may differ. These mechanisms may range from deposition in public data repositories, consistent with requirements for many scientific journals,[20] to, for certain types of information, controlled access in federal research data centers that facilitate secondary research use by the public.[21] EPA should collaborate with other federal agencies to identify strategies to protect confidential and private information in any circumstance in which it is making information publicly available. These strategies should be cost-effective and may also include: Requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements.[22]

Implementation of this proposed rule will be consistent with the definition of ''research data'' in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, exemptions in Public Law 89–487, and other applicable federal laws.

This proposed regulation is intended to apply prospectively to final regulations that are determined to be ''significant regulatory actions'' pursuant to E.O. 12866. The Agency's offices should be guided by this policy to the maximum extent practicable during ongoing regulatory action, even where such research has already been generated, solicited, or obtained.

III. Request for Comment

EPA solicits comment on all aspects of the proposed regulation and the bases articulated for it above. Specifically, EPA believes that it has identified appropriate sources of statutory authority for this proposed regulation in Section I(c) above, and solicits public comment on whether additional or alternative sources of authority are appropriate bases for this proposed regulation. EPA further believes that a generally applicable regulatory provision of the type proposed here is the appropriate vehicle to establish and implement the policies articulated in Section II above, in the interests of consistency, predictability, and transparency across the functions that EPA performs.

EPA solicits comment on whether alternative or additional regulatory or other policy vehicles are appropriate to establish and implement these policies, and whether further regulatory or other policy vehicles at the programmatic or statutory level would be appropriate as alternative or additional steps the agency may take to further the policies articulated in Section II above.

EPA solicits comment on the effects of this proposed rule on individual EPA programs, including whether certain activities are appropriate to be excepted or if other requirements would affect implementation. EPA also seeks comments on which criteria the Agency should use to base any exceptions, including whether case-by-case exceptions may be appropriate.

Although the proposed regulatory text would impose requirements specifically on final regulations determined to be ''significant regulatory actions'' under E.O. 12866, EPA solicits comment on whether and to what extent these requirements, or other provisions and policies, should apply to other stages of the rulemaking process, including proposed rules, as well as to other types of agency actions and promulgations, such as guidance. EPA also solicits comment on whether a narrower scope of coverage would be appropriate, such as only final regulations that are determined to be ''major'' under the Congressional Review Act, or ''economically significant'' under E.O. 12866. EPA also requests comment on whether certain categories of regulations should be excluded from coverage, such as those that merely reaffirm an existing standard, or some other category. For instance, we request comment on whether the provisions of the proposed rule should apply to individual party adjudications, enforcement activities, or permit proceedings when EPA determines that these provisions are practical and appropriate and that the actions are scientifically or technically novel or likely to have precedent-setting influence on future actions. EPA seeks comment on whether the Agency should apply the provisions of the proposed rule to these actions or to specific types of actions within these categories. The Agency also seeks comment on whether other agency actions, beyond significant final regulatory actions under E.O. 12866, should be included, such as site-specific permitting actions or non-binding regulatory determinations.

EPA solicits comment on the definitions of ''*pivotal regulatory science,*'' and ''*dose response data and models*'' and how to implement such definitions.

EPA also solicits comment on how to incorporate stronger data and model access requirements into the terms and conditions of cooperative agreements and grants. EPA solicits comments on how it can build upon other federal agencies' policies regarding grantee and cooperator requirements for data access and data sharing. EPA also solicits suggestions for a platform that would enable the Agency to implement the provisions of this proposal related to increasing public access to EPA-funded data. EPA also seeks comment on methodologies and technologies designed to provide protected access to identifiable and sensitive data, such as individual health data, and on commenters experience with the use of such methodologies and technologies and their strengths and limitations. Similarly, EPA seeks comment on how to balance appropriate protection for copyrighted or confidential business information, including where protected by law, with requirements for increased transparency of pivotal regulatory science. EPA also requests comment on whether there are other compelling interests besides privacy, confidentiality, national and homeland

[17] *https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html.*

[18] *https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities.*

[19] *https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf*; *https://www.nap.edu/catalog/24652/innovations-in-federal-statistics-combining-data-sources-while-protecting-privacy*; *https://www.nap.edu/catalog/24893/federal-statistics-multiple-data-sources-and-privacy-protection-next-steps.*

[20] For example, see policies or recommendations of publishers Taylor & Francis, Elsevier, PLOS, and Springer Nature.

[21] For example: *https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/*; *https://www.census.gov/fsrdc.*

[22] These recommendations are consistent with those of Lutter and Zorn (2016). *https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf.we re.*

security that may require special consideration when data is being released.

EPA solicits comment on implementation of the proposed regulation, including which parts of the Agency should be responsible for carrying out these requirements. EPA seeks comment on the effective date of a rule as well as on whether the Agency should seek to phase-in the requirements for certain significant regulatory actions or seek to prioritize specific actions. For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews—particularly where the governing statute requires repeated review on a fixed, date-certain cycle—EPA seeks comment on the manner in which this proposed rule should apply to that previous record. EPA also solicits comments on whether and how the proposed rule should apply to dose response data and models underlying pivotal regulatory science if those data and models were developed prior to the effective date. In addition, EPA seeks comment on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently introduce bias regarding the timeliness and quality of the scientific information available. EPA seeks comment on how to address a circumstance in which EPA has a statutory requirement to make a determination for which scientific information publicly available in a manner sufficient for independent validation does not exist. EPA also seeks comment on any additional implementation challenges not discussed in this notice that commenters may be aware of as well as suggestions for addressing them.

The proposed rule includes a provision allowing the Administrator to exempt significant regulatory decisions on a case-by-case basis if he or she determines that compliance is impracticable because it is not feasible to ensure that all dose response data and models underlying pivotal regulatory science are publicly available in a fashion that is consistent with law, protects privacy and confidentiality, and is sensitive to national and homeland security, or in instances where OMB's Information Quality Bulletin for Peer Review provides for an exemption (Section IX). The agency requests comment on whether these exemptions are appropriate, and on whether there are other situations in which specific significant regulatory actions, or specific categories of significant regulatory actions should be exempted.

EPA also requests comment on whether the disclosure requirements applicable to dose response data and models in the proposed rule should be expanded to cover other types of data and information, such as for example economic and environmental impact data and models that are designed to predict the costs, benefits, market impacts and/or environmental effects of specific regulatory interventions on complex economic or environmental systems.

IV. Statutory and Executive Orders Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

EPA believes the benefits of this proposed rule justify the costs. The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; this is consistent with the conclusions of the National Academies [23] This action should be implemented in a cost-effective way and is consistent with recent activities of the scientific community and other federal agencies, which will help to lower costs of implementation. The proposed rule directs EPA to make all reasonable efforts to explore methodologies, technologies, and institutional arrangements for making dose response models and data underlying pivotal regulatory science used in significant regulatory decisions available to the public in a manner sufficient for independent validation, consistent with law and protection of privacy, confidentiality, and national and homeland security. However, it does not compel the Agency to make that information available where it concludes after all such reasonable efforts that doing so in way that complies with the law and appropriate protections is not possible.

By limiting the proposed rule to pivotal regulatory science for final significant regulatory actions pursuant to E.O. 12866, the proposed rule ensures that this standard for transparency affects a smaller subset of regulations which are economically significant, create inconsistency for other federal agencies, alter budgetary impacts, or raise novel legal or policy issues. One recent analysis found that: ''Improvements in reproducibility can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits. . . .'' They concluded that ''an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.'' [24]

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because it relates to ''agency organization, management or personnel.''

C. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national

[23] *https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities.*

[24] *https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf.*

government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

List of Subjects in 40 CFR Part 30

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: April 24, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA proposes to add 40 CFR part 30 as follows:

PART 30—TRANSPARENCY IN REGULATORY DECISIONMAKING

■ 1. Add part 30 to read as follows:

PART 30—TRANSPARENCY IN REGULATORY DECISIONMAKING

Sec.

Authority: Clean Air Act sections 103, 301(a), 42 U.S.C. 7403, 7601(a); Clean Water Act sections 104, 501, 33 U.S.C. 1254, 1361; Safe Drinking Water Act sections 1442, 1450(a)(1), 42 U.S.C. 300j–1, 300j–9(a)(1); Resource Conservation and Recovery Act sections 2002(a)(1), 7009, 42 U.S.C. 6912(a)(1), 6979; Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311, 42 U.S.C. 9616, 9660; Emergency Planning and Community Right-To-Know Act section 328, 42 U.S.C. 11048; Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a), 7 U.S.C. 136r(a), 136w; and Toxic Substances Control Act, as amended, section 10, 15 U.S.C. 2609.

§ 30.1 What is the purpose of this subpart?

This subpart directs EPA to ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation.

§ 30.2 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A; and the following terms shall have the specific meanings given them.

Dose response data and models means the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a predicted health or environmental impact. Such functions typically underlie pivotal regulatory science that drives the size of benefit-cost calculations, the level of a standard, and/or the points of departure from which reference values (reference doses or reference concentrations) are calculated.

Pivotal regulatory science means the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.

Regulatory decisions mean final regulations determined to be ''significant regulatory actions'' by the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory science means scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.

Research data means ''research data'' as that term is defined in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

§ 30.3 How do the provisions of this subpart apply?

The provisions of this subpart apply to *dose response data and models* underlying *pivotal regulatory science* that are used to justify significant *regulatory decisions* regardless of the source of funding or identity of the party conducting the regulatory science. The provisions of this section do not apply to physical objects (like laboratory samples), drafts, and preliminary analyses. Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.

§ 30.4 What requirements apply to EPA's use of studies in taking final action?

EPA shall clearly identify all studies (or other regulatory science) relied upon when it takes any final agency action. EPA should make all such studies available to the public to the extent practicable.

§ 30.5 What requirements apply to EPA's use of dose response data and models underlying pivotal regulatory science?

When promulgating significant regulatory actions, the Agency shall ensure that *dose response data and models* underlying *pivotal regulatory science* are publicly available in a manner sufficient for independent validation. Where the Agency is making data or models publicly available, it shall do so in a fashion that is consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security. Information is considered ''publicly available in a manner sufficient for independent

validation'' when it includes the information necessary for the public to understand, assess, and replicate findings. This may include, for example:

(a) Data (where necessary, data would be made available subject to access and use restrictions).

(b) Associated protocols necessary to understand, assess, and extend conclusions;

(c) Computer codes and models involved in the creation and analysis of such information;

(d) Recorded factual materials; and

(e) Detailed descriptions of how to access and use such information.

The provisions of this section apply to dose response data and models underlying pivotal regulatory science regardless of who funded or conducted the underlying data, models, or other regulatory science. The agency shall make all reasonable efforts to explore methodologies, technologies, and institutional arrangements for making such data available before it concludes that doing so in a manner consistent with law and protection of privacy, confidentiality, national and homeland security is not possible. Where data is controlled by third parties, EPA shall work with those parties to endeavor to make the data available in a manner that complies with this section.

§ 30.6 What additional requirements pertain to the use of dose response data and models underlying pivotal regulatory science?

EPA shall describe and document any assumptions and methods used, and should describe variability and uncertainty. EPA shall evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold dose response, on a case-by-case basis. EPA shall clearly explain the scientific basis for each model assumption used and present analyses showing the sensitivity of the modeled results to alternative assumptions. When available, EPA shall give explicit consideration to high quality studies that explore: A broad class of parametric dose-response or concentration-response models; a robust set of potential confounding variables; nonparametric models that incorporate fewer assumptions; various threshold models across the dose or exposure range; and models that investigate factors that might account for spatial heterogeneity.

§ 30.7 What role does independent peer review in this section?

EPA shall conduct independent peer review on all *pivotal regulatory science* used to justify *regulatory decisions,* consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.

Because transparency in regulatory science includes addressing issues associated with assumptions used in models, EPA shall ask peer reviewers to articulate the strengths and weaknesses of EPA's justification for the assumptions applied and the implications of those assumptions for the results.

§ 30.8 How is EPA to account for cost under this subpart?

EPA shall implement the provisions of this subpart in a manner that minimizes costs.

§ 30.9 May the EPA Administrator grant exemptions to this subpart?

Yes. The Administrator may grant an exemption to this subpart on a case-by-case basis if he or she determines that compliance is impracticable because:

(a) It is not feasible to ensure that all dose response data and models underlying pivotal regulatory science is publicly available in a manner sufficient for independent validation, in a fashion that is consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security; or

(b) It is not feasible to conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions for reasons outlined in OMB Final Information Quality Bulletin for Peer Review (70 FR 2664), Section IX.

§ 30.10 What other requirements apply under this subpart?

EPA shall implement the provisions of this section consistent with the definition of ''research data'' in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, exemptions in Public Law 89–487, and other applicable federal laws. Where appropriate, data sharing agreements and state-of-the-art data-masking techniques may be employed to facilitate access to information.

[FR Doc. 2018–09078 Filed 4–27–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 83
Monday, April 30, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2018]

Foreign-Trade Zone (FTZ) 81—Portsmouth, New Hampshire; Notification of Proposed Production Activity; Textiles Coated International Inc. (Polytetrafluoroethylene Products); Manchester and Londonderry, New Hampshire; Correction

The **Federal Register** notice (83 FR 17790, 4/24/18) describing the notification of proposed production activity submitted by the Textiles Coated International Inc., operator of Site 4 of FTZ 81, requesting authority to produce polytetrafluoroethylene products at its facilities in Manchester and Londonderry, New Hampshire, is corrected as follows:

In the heading of the notice, third line, the correct docket number for the case should read ''Docket B–25–2018.''

Dated: April 24, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–09049 Filed 4–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

DATES: Applicable April 30, 2018.

SUMMARY: The Department of Commerce (Commerce) is initiating a new shipper review (NSR) of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (China) with respect to Nanjing Yinxiangchen International Trade Co., Ltd. (Yinxiangchen). We have determined that this request meets the statutory and regulatory requirements for initiation.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; Telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty *Order* on freshwater crawfish tail meat from China in the **Federal Register** on September 15, 1997.[1] Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), Commerce received a timely and properly filed request for an NSR from Yinxiangchen during the six months following the anniversary month of the antidumping duty *Order*.[2] In its request, Yinxiangchen certified that it is both a producer and exporter of the subject merchandise upon which the *Order* is based.[3]

Pursuant to section 751(a)(2)(B)) of the Act and 19 CFR 351.214(b)(2)(i), Yinxiangchen certified that it did not export subject merchandise to the United States during the period of investigation (POI).[4] In addition, pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Yinxiangchen certified that, since the initiation of the investigation, it had never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the POI.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Yinxiangchen also certified that its export activities were not controlled by the Government of China.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Yinxiangchen submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Period of Review

Pursuant to 19 CFR 351.214(c), an exporter or producer may request a NSR within one year of the date on which its subject merchandise first entered. Further, 19 CFR 351.214(d)(1) states that Commerce will initiate an NSR in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for review is made during the six-month period ending with the end of the anniversary month or the semi-annual anniversary month, whichever is applicable. In accordance with 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for an NSR initiated in the month immediately following the semi-annual anniversary month will be the six-month period immediately preceding the semi-annual anniversary month. Yinxiangchen requested an NSR within one year from the date its merchandise first entered. The request was filed in March 2018, the semi-annual anniversary month of the *Order.* Therefore, the POR for this NSR is September 1, 2017, through February 28, 2018.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), we find that the request from Yinxiangchen meets the threshold requirements for the initiation of an NSR for shipments of freshwater crawfish tail meat from China produced and exported during the POR by Yinxiangchen.[8]

[1] *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China,* 62 FR 48218 (September 15, 1997) (*Order*).

[2] *See* Yinxiangchen's Letter, ''Freshwater Crawfish Tail Meat from the People's Republic of China: Request for New Shipper Review,'' dated March 26, 2018 (Yinxiangchen's NSR Request).

[3] *See* Yinxiangchen's NSR Request at Exhibit 1.

[4] *See id.*

[5] *See id.*

[6] *Id.*

[7] *See id.* at Exhibit 2.

[8] *See* the Memorandum, ''Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Nanjing Yinxiangchen International Trade Co., Ltd.,'' dated concurrently with this notice.

The Trade Facilitation and Trade Enforcement Act of 2015 [9] amended section 751(a)(2)(B) of the Act, including provisions which apply to this NSR. Specifically, the TFTEA amended the Act so that, as of February 24, 2016, Commerce no longer instructs U.S. Customs and Border Protection (CBP) to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR.

Unless extended, Commerce intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation and the final results of the review no later than 90 days after the date the preliminary results are issued.[10]

It is Commerce's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Yinxiangchen which will include a section requesting information concerning the company's eligibility for a separate rate. We will rescind the NSR of Yinxiangchen if we determine that the company has not demonstrated that it is eligible for a separate rate.

Because Yinxiangchen certified that it produced and exported subject merchandise, the sale of which is the basis for its request for an NSR, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise produced and exported by Yinxiangchen.

To assist in its analysis of the *bona fide* nature of Yinxiangchen's sales, upon initiation of this NSR, Commerce will require Yinxiangchen to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in the NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

[9] The Trade Facilitation and Trade Enforcement Act of 2015, H.R. 644, Public Law 114–125 (February 24, 2016) (TFTEA).

[10] *See* section 751(a)(2)(B)(iv) of the Act.

Dated: April 24, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–09046 Filed 4–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Rescission of Antidumping Duty Administrative Review, in Part; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review, in part, on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) for the period of review (POR) November 1, 2016, through October 31, 2017.

DATES: Applicable April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua Poole, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on diamond sawblades from China for the POR November 1, 2016, through October 31, 2017.[1] On January 11, 2018, in response to timely requests from the petitioner,[2] Husqvarna (Hebei) Co., Ltd. (Husqvarna), and Danyang NYCL Tools Manufacturing Co., Ltd (Danyang NYCL), and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on diamond sawblades from China with respect to 45 companies, including Bosun Tools Co., Ltd. (Bosun), Danyang NYCL, and Husqvarna.[3] On March 7, 2018 and March 8, 2018, Husqvarna and the petitioner respectively timely withdrew their requests for an administrative review for Husqvarna.[4] On March 22, 2018, Danyang NYCL and the petitioner timely withdrew their requests for an administrative review for Danyang NYCL.[5] On April 16, 2018, the petitioner timely withdrew its request for administrative review for Bosun.[6]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because the petitioner, Husqvarna, and Danyang NYCL withdrew their requests for review within the 90-day time limit, and because we received no other requests for review of Bosun, Danyang NYCL, and Husqvarna, we are rescinding the administrative review of the order, in part, with respect to Bosun, Danyang NYCL, and Husqvarna.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Bosun, Danyang NYCL, and Husqvarna, for which the review is rescinded, antidumping duties shall be assessed at the rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 50620 (November 1, 2017).

[2] The petitioner in this review is Diamond Sawblades Manufacturers' Coalition.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329 (January 11, 2018).

[4] *See* Letters of withdrawals of requests for review from Husqvarna and the petitioner dated March 7, 2018 and March 8, 2018, respectively.

[5] *See* Letters of withdrawals of requests for review from Danyang NYCL and the petitioner dated March 22, 2018.

[6] *See* Letter of withdrawal of request for review from the petitioner dated April 16, 2018. Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. All deadlines in this segment of the proceeding have been extended by 3 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 25, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–09047 Filed 4–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG107

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Chesapeake Tunnel Joint Venture (CTJV) for authorization to take marine mammals incidental to the Parallel Thimble Shoal Tunnel Project (PTST) in Virginia Beach, Virginia. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 30, 2018.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/node/23111* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

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

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the

issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

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

Summary of Request

On January 11, 2018, NMFS received a request from the CTJV for an IHA to take marine mammals incidental to pile driving at the Chesapeake Bay Bridge and Tunnel (CBBT) near Virginia Beach, Virginia. CTJV's request is for take of small numbers of harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), bottlenose dolphin (*Tursiops* spp.), harbor porpoise (*Phocoena phocoena),* and humpback whale (*Megaptera novaeangliae*) by Level A and Level B harassment. Neither the CTJV nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The PTST project consists of the construction of a two-lane parallel tunnel to the west of the existing Thimble Shoal Tunnel, connecting Portal Island Nos. 1 and 2 (Figure 1 in application). Upon completion, the new tunnel will carry two lanes of southbound traffic and the existing tunnel will remain in operation and carry two lanes of northbound traffic. The PTST project will address existing constraints to regional mobility based on current traffic volume along the Chesapeake Bay Bridge-Tunnel (CBBT) facility; improve safety by minimizing one lane, two-way traffic in the tunnel; improve the ability to conduct necessary maintenance with minimal impact to traffic flow; and ensure a reliable southwest hurricane evacuation route for residents of the eastern shore and/or a northern evacuation route for residents of the eastern shore, Norfolk, and Virginia Beach. The CBBT is a 23 mile fixed link crossing the mouth of the Chesapeake Bay which connects Northampton County on the Delmarva Peninsula with Virginia Beach, which is part of the Hampton Roads metropolitan area.

The new parallel tunnel will be bored under the Thimble Shoal Channel. The 6,525 linear feet (ft) of new tunnel will be constructed with a top of tunnel depth/elevation of 100 ft below Mean Low Water (MLW) within the width of the 1,000-ft-wide navigation channel. Impact pile driving will be used to install steel piles and vibratory pile driving will be utilized to install sheet piles. Sound produced during pile driving activities may result in behavioral harassment or auditory injury to local marine mammals. In-water construction will occur during spring and summer of 2018. This proposed IHA would cover one year of a larger project for which will run through 2022. The larger project, which does not employ pile driving and does not require an IHA, involves tunnel excavation with a tunnel boring machine and construction of a roadway within the tunnel.

Dates and Duration

In-water construction is planned to begin on June 1, 2018 and run through March 31, 2019. Pile driving, which may be concurrent at times, could occur up to 8 hours per day for up to 202 days.

Specific Geographic Region

The PTST project is located between Portal Island Nos. 1 and 2 of the CBBT, and will be bored underneath the Thimble Shoal Channel in the Chesapeake Bay. Water depths within the PTST construction area range from 0 to 60 ft below Mean Lower Low Water (MLLW). The Thimble Shoal Channel is 1,000 ft wide, is authorized to a depth of 55 ft below MLLW, and is maintained at a depth of 50 ft MLLW.

Detailed Description of Specific Activity

Construction of the tunnel structure will begin on Portal Island No. 1 and move from south to north to Portal Island No. 2. It is anticipated that this project will be constructed without any or minimal effect on the existing tunnel and traffic operations. The only short-term possibility for traffic impact could occur when connecting the existing roadway to the new roadway. The Tunnel Boring Machine (TBM) components will be barged and trucked to Portal Island No. 1. The TBM will be assembled within an entry/launch portal that will be constructed on Portal Island No. 1. The machine will then both excavate material and construct the tunnel as it progresses from Portal Island No. 1 to Portal Island No. 2. Material excavated from within the tunnel will be transported via a conveyor belt system back to Portal Island No 1. Approximately 350,000 cubic yards (cy) (*in situ* volume) of material will be excavated by the TBM and 524,000 cy (bulked volume) will be conveyed to Portal Island No. 1. This material will be transported offsite using a combination of trucks and barges and will be disposed at an approved off-site, upland facility in accordance with the Dredged Material Management Plan.

Precast concrete tunnel segments will be transported to the TBM for installation. The TBM will assemble the tunnel segments in-place as the tunnel is bored. After the TBM reaches Portal Island No. 2, it will be disassembled and the components will be removed via an exit/receiving portal on Portal Island No. 2. After the tunnel structure is completed, final upland work for the PTST project will include installation of the final roadway, lighting, finishes, mechanical systems, and other required internal systems for tunnel use and function. In addition, the existing fishing pier will be repaired and refurbished.

In-Water Construction Activities. In-water activities for the tunnel construction will be limited to eight primary actions:

(1) Construction and use of a temporary dock, an integrated temporary conveyor dock, and mooring facilities;

(2) Construction of temporary roadway trestles requiring a limited number of in-water piles and partially extending over water to facilitate safe construction vehicle movements on each portal island. For Portal Island No. 1, the temporary docking will integrate the roadway trestle in the same structure;

(3) Construction of temporary work trestles approximately 850 ft long and 35 ft wide each, and offset west of the tunnel alignment to facilitate construction of the berms;

(4) Temporary subaqueous stockpiling of existing armor stones for re-use;

(5) Construction of two permanent engineered berms (one extending channelward from each of the two portal islands) including installation of steel sheet pile to provide settlement mitigation between the existing tunnel and the new tunnel, handling of existing stone, adding new stone, and limited mechanical dredging at Portal Island No. 1;

(6) Underground (below the sediment-water interface) tunnel boring;

(7) Repair/rehabilitation to the existing fishing pier substructure and trestle substructure (only if deemed necessary based on inspection); and

(8) Construction and use of outfalls on the east side of Portal Island No. 1 to allow for permitted process water discharges from a project-specific wastewater treatment facility, and periodic, intermittent warm water discharges of non-contact cooling water from an on-site cooling system.

Up to 132 hollow steel piles measuring 36 inches in diameter will be installed to support the integrated temporary dock/barge unloading/

conveyor facility and temporary conveyor dock at Portal Island No. 1. Of these, 82 will be placed in-water and 50 will be placed upland (above the mean high water (MHW) line). Up to 30 hollow steel piles (36-inch diameter) will be installed to provide mooring facilities along each portal island (six dolphin moorings comprised of five piles each).

Up to 160 hollow steel piles (36-inch in diameter, below MHW) will be installed to support temporary work platforms (trestles) offset to the west of each of the two engineered berms. These trestles will extend 841 ft and 809 ft channelward from Portal Island Nos. 1 and 2, respectively. Up to 12 round piles will be installed on the island above MHW to support a temporary roadway trestle at Portal Island No. 2. Installation for the temporary docks and mooring dolphins will occur over approximately 2 months; commencing in June 2018 as shown in Table 1. Installation of the temporary offset construction trestles will occur over approximately five months. In-water pile driving activities will also include installation of sheet pile for settlement mitigation and as an in-water containment system to facilitate construction of the engineered berms adjacent to Portal Island Nos. 1 and 2. A total of 1,540 linear ft of sheet pile (or 830 individual sheets each 27.56 inches in length) will be installed over approximately eight months.

TABLE 1—ANTICIPATED PILE INSTALLATION SCHEDULE

Pile location	Pile function	Pile type	Number of piles (upland/in-water)	Anticipated installation date
Portal Island Nos. 1 and 2 ..	Mooring dolphins (in-water)	36-inch diameter hollow steel.	30	1 June to 30 June 2018.
West of Portal Island No. 1	Berm construction trestle (in-water).	36-inch diameter hollow steel.	80	1 July 2018 through 1 January 2019.
West of Portal Island No. 2	Berm construction trestle (in-water).	36-inch diameter hollow steel.	80	1 July 2018 through 1 January 2019.
Portal Island No. 1	Temporary docks (upland) ..	36-inch diameter hollow ..... steel	50	1 May 2018 through 30 June 2018.
Portal Island No. 1	Temporary docks (in- water)	36-inch diameter hollow steel.	82	1 July 2018 to 30 August 2018.
Portal Island No. 2 (above MHW).	Temporary roadway trestle (upland).	36-inch diameter hollow steel.	12	1 May to 31 May 2018.
Portal Island No. 1 (above MHW).	Excavated TBM material containment holding (muck) bin (upland).	28 and 18-inch steel sheet	1,110	1 May 2018 to 30 September 2018.
Portal Island Nos. 1 and 2 (above and below MHW).	Settlement mitigation and flowable fill containment.	28-inch steel sheet	2,554	1 August 2018 to 30 March 2019.
Portal Island Nos. 1 and 2 (above MHW).	Portal excavation	Steel sheet	1,401	1 June 2018 to 30 September 2018, 1 January to 30 March 2019.
Portal Island Nos. 1 and 2 (above MHW).	Excavation Support	Steel sheet	240	1 April 2018 to 30 August 2019 to 1 January 2019 to 30 March 2019.
Total (above and below water).	.....	.....	5,305 Sheet Piles; 334 Round Piles.	

Prior to initiation of the boring of the tunnel, construction of two engineered in-water berms will be required to provide structural support to the launch/receiving sections of the tunnel that are in closest proximity to the portal islands. Each engineered berm (at its maximum design configuration) will extend from the portal island channelward and will be approximately 1,400 ft long by 260 ft wide (at its widest point). Construction of the engineered berms will require installation of temporary trestles offset to the west of each berm alignment to serve as work platforms. The trestles will be supported by 36-inch diameter round steel piles driven by an impact hammer (with an encased bubble curtain). Construction will also require installation of parallel rows of sheet pile (using a vibratory hammer) approximately 530 linear ft in length by 60 ft in width channelward from MHW along the berm alignment at both Portal Islands.

Mechanical dredging to remove unsuitable berm foundation material (Portal Island No. 1 only) and disposal of dredged material via bottom-dump, or upland placement at an approved site. Note that NMFS does not consider underwater noise levels associated with dredging to occur at a level that could result in harassment of marine mammals. Therefore, dredging operations are not considered further in this analysis.

A number of additional upland construction activities are planned on the Portal Islands as part of the PTST project. Since these activities will not occur in water, they are not included as part of this analysis and are described in detail in section 1.3 in the application.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 2 lists all species with expected potential for occurrence in near the CBBT and summarizes information

related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond United States waters. All managed stocks in this region are assessed in NMFS's United States Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.,* 2017a,b). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2016 Stock Assessment Report (Hayes *et al.,* 2017a) and draft 2017 stock assessment report (Hayes *et al.,* 2017b) (available online at: *www.nmfs.noaa.gov/pr/sars/regiont.htm*).

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic Right whale	*Eubalaena glacialis*	Western North Atlantic (WNA)	E/D; Y	458 (0; 455; 2017)	1.4	36
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-; N	335 (.42; 239; 2012)	3.7	8.5
Fin whale	*Balaenoptera physalus*	WNA	E/D; Y	1,618 (0.33; 1,234; 2011)	2.5	2.65
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops spp.*	WNA Coastal, Northern Migratory.	D; Y	11,548 (0.36; 8,620; 2010–11).	86	1.0–7.5
		WNA Coastal, Southern Migratory.	D; Y	9,173 (0.46; 6,326; 2010–11).	63	0–12
		Northern North Carolina Estuarine System.	D; S	823 (0.06; 782; 2013)	7.8	1.0–16.7
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-; N	79,833 (0.32; 61,415; 2011).	706	307 (0.16)
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	WNA	-; N	75,834 (0.1; 66,884, 2012).	2,006	368
Gray seal	*Halichoerus grypus*	WNA	-; N	27,131 (.1, 25,908, 2016)	1,554	5,207

[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.

[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.

Note—*Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the proposed survey areas are included in Table 2. However, the occurrence of endangered North Atlantic right whales and endangered fin whales is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Between 1998 and 2013, there were no reports of North Atlantic right whale strandings within the Chesapeake Bay and only four reported standings along the coast of Virginia. During this same period, only six fin whale strandings were recorded within the Chesapeake Bay (Barco and Swingle 2014). In 2016, there were no reports of fin whale strandings (Barco *et al.,* 2017). Due to the low occurrence of North Atlantic right whales and fin whales, NMFS is not proposing take of these species.

Humpback Whale

Humpback whales inhabit all major ocean basins from the equator to subpolar latitudes. They generally follow a predictable migratory pattern in both hemispheres, feeding during the summer in the higher latitudes (40 to 70 degrees latitude) and migrating to lower latitudes (10 to 30 degrees latitude) where calving and breeding take place in the winter (Perry *et al.,* 1999, NOAA

Fisheries 2006a). During the spring, summer, and fall, humpback whales in the North Atlantic Ocean feed over a range that includes the eastern coast of the United States, the Gulf of St. Lawrence, Newfoundland/Labrador, and western Greenland.

Humpback whales are the whale most likely to occur in the project area and could be found there at any time of the year. NOAA reported that between 2009–2013, three humpback whales were stranded in Virginia in the lower Bay (one off of Northampton County, one near the York River, and one off of Ft. Story), and two were stranded in Maryland near Ocean City (NOAA Fisheries 2015b). All of the whales stranded in Virginia and Maryland had signs of human-caused injury. NOAA's database of mortality and serious injury indicates no human caused serious injuries for humpback whales in the Chesapeake Bay proper between 1999 and 2003. The only reported mortality of a humpback whale during the 1999–2003 time period was at the mouth of the Chesapeake Bay in Virginia as the result of a ship strike. Three other humpback whale mortalities related to ship strikes or entanglement in fishing gear in Virginia waters were reported during the study period. One serious injury to a humpback whale as a result of entanglement in fishing gear occurred near Ocean City, Maryland (Cole *et al.,* 2005).

There have been 33 humpback whale strandings recorded in Virginia between 1988 and 2013; 11 had signs of entanglement and 9 had injuries from vessel strikes. Most of these strandings were reported from ocean facing beaches, but 11 were also within the Chesapeake Bay (Barco and Swingle 2014). Strandings occurred in all seasons, but were most common in the spring. In the past 5 years of reported data (2011–2015), there have been five humpback whale strandings in Virginia (Swingle *et al.,* 2012, Swingle *et al.,* 2013, Swingle *et al.,* 2014, Swingle *et al.,* 2015, Swingle *et al.,* 2016). Since the beginning of 2017, five dead humpback whales have been observed in Virginia (Funk 2017). Ship strikes have been attributed as the likely cause of death in these instances. Note that in 2016, NMFS declared that an Unusual Mortality Event (UME) for humpback whales strandings along the Atlantic Coast from Maine through North Carolina. This means that elevated whale mortalities have occurred in the area. Since January 2016 through March 2018, thirteen strandings have occurred in Virginia and two have occurred in Maryland.

In winter, whales from the six feeding areas mate and calve primarily in the West Indies where spatial and genetic mixing among these groups occur (Waring *et al.,* 2000). Various papers (Clapham and Mayo 1990, Clapham *et al.,* 1992, Barlow and Clapham 1997, Clapham *et al.,* 1999) summarized information gathered from a catalogue of photographs of 643 individuals from the western North Atlantic population of humpback whales (also referred to as the Gulf of Maine stock). These photographs identified reproductively mature western North Atlantic humpbacks wintering in tropical breeding grounds in the Antilles, primarily on Silver and Navidad Banks, north of the Dominican Republic. The primary winter range also includes the Virgin Islands and Puerto Rico (NOAA Fisheries 1991). Not all whales migrate to the West Indies every year and some are found in the mid- and high-latitude regions during the winter months.

Humpback whales use the mid-Atlantic as a migratory pathway to and from the calving/mating grounds, but it may also be an important winter feeding area for juveniles. Since 1989, observations of juvenile humpbacks in the mid-Atlantic have been increasing during the winter months, peaking from January through March (Swingle *et al.,* 1993). Biologists theorize that non-reproductive animals may be establishing a winter feeding range in the mid-Atlantic since they are not participating in reproductive behavior in the Caribbean. Swingle *et al.* (1993) identified a shift in distribution of juvenile humpback whales in the nearshore waters of Virginia, primarily in winter months. Identified whales using the mid-Atlantic area were found to be residents of the Gulf of Maine and Atlantic Canada (Gulf of St. Lawrence and Newfoundland) feeding groups; suggesting a mixing of different feeding populations in the Mid-Atlantic region. Strandings of humpback whales have increased between New Jersey and Florida since 1985, consistent with the increase in mid-Atlantic whale sightings. Strandings were most frequent during September through April in North Carolina and Virginia waters, and were composed primarily of juvenile humpback whales of no more than 11 meters in length (Wiley *et al.,* 1995).

Bottlenose Dolphin

Bottlenose dolphins occur in temperate and tropical oceans throughout the world, ranging in latitudes from 45° N to 45° S (Blaylock 1985). In the western Atlantic Ocean there are two distinct morphotypes of bottlenose dolphins, an offshore type that occurs along the edge of the continental shelf as well as an inshore type. The inshore morphotype can be found along the entire United States coast from New York to the Gulf of Mexico, and typically occurs in waters less than 20 meters deep (NOAA Fisheries 2016a). There is evidence that the inshore bottlenose dolphins may be made up of seven different stock which may be either year-round residents or migratory. Bottlenose dolphins found in Virginia are representative primarily of either the northern migratory coastal stock or southern migratory coastal stock. The northern migratory stock spends the winter along the coast of North Carolina and migrates as far north as Long Island, New York in the summer. They are rarely found north of North Carolina in the winter (NOAA Fisheries 2016a). During October–December, the southern migratory stock occupies waters of southern North Carolina. During January–March, the southern migratory stock appears to move as far south as northern Florida. During April–June, the stock moves north to North Carolina while during July–August, the stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to the eastern shore of Virginia. It is possible that these animals also occur inside the Chesapeake Bay and in nearshore coastal waters. There is also evidence that limited numbers of the Northern North Carolina Estuarine System Stock (NNCES) may occur in the Chesapeake Bay in the July–August timeframe.

Bottlenose dolphins are the most abundant marine mammal along the Virginia coast and within the Chesapeake Bay. They are seen annually in Virginia from May through October with around 65 strandings occurring each year (Barco and Swingle 2014). During 2016, 68 bottlenose dolphin strandings were recorded in Virginia (Barco *et al.,* 2017). Stranded bottlenose dolphins have been recorded as far north as the Potomac River in the Chesapeake Bay (Blaylock 1985). Both the northern and southern migratory coastal stocks are listed as depleted under the MMPA.

The inshore variety of bottlenose dolphins often travel in small groups of 2 to 15 individuals. These groups and will travel into bays, estuaries, and rivers to feed, utilizing echolocation to find a variety of prey, including fish, squid, and benthic invertebrates (NOAA Fisheries 2017b).

Harbor Porpoise

The harbor porpoise is typically found in colder waters in the northern

hemisphere. In the western North Atlantic Ocean, harbor porpoises range from Greenland to as far south as North Carolina (Barco and Swingle 2014). They are commonly found in bays, estuaries, and harbors less than 200 meters deep (NOAA Fisheries 2017c). Harbor porpoises in the United States are made up of the Gulf of Main/Bay of Fundy stock. Gulf of Main/Bay of Fundy stock are concentrated in the Gulf of Maine in the summer, but are widely dispersed from Maine to New Jersey in the winter. South of New Jersey, harbor porpoises occur at lower densities. Migrations to and from the Gulf of Maine do not follow a defined route (NOAA Fisheries 2016c).

Harbor porpoise occur seasonally in the winter and spring in small numbers in mid-Atlantic waters. Strandings occur primarily on ocean facing beaches, but they occasionally travel into the Chesapeake Bay to forage and could occur in the project area (Barco and Swingle 2014). Since 1999, stranding incidents have ranged widely from a high of 40 in 1999 to 2 in 2011, 2012, and 2016 (Barco *et al.,* 2017.

Harbor Seal

Harbor seals occur in arctic and temperate coastal waters throughout the northern hemisphere, including on both the east and west coasts of the United States. On the east coast, harbor seals can be found from the Canadian Arctic down to Georgia (Blaylock 1985). Harbor seals occur year-round in Canada and Maine and seasonally (September–May) from southern New England to New Jersey (NOAA Fisheries 2016d). The range of harbor seals appears to be shifting as they are regularly reported further south than they were historically. In recent years, they have established haul out sites in the Chesapeake Bay including on the portal islands of the CBBT (NOAA Fisheries 2016d, Rees *et al.,* 2016).

Harbor seals are the most common seal in Virginia (Barco and Swingle 2014). They can be seen resting on the rocks around the portal islands of the CBBT from December through April. Seal observation surveys conducted at the CBBT recorded 112 harbor seals in the 2014/2015 season and 184 harbor seals during the 2015/2016 season (Rees *et al.,* 2016).

The harbor seal is a medium-sized seal, reaching about 2 meters in length. They spend a fair amount of time hauled out on land, often in large groups (Rees *et al.,* 2016). Haul out sites—which may be rocks, beaches, or ice—provide the opportunity for rest, thermal regulation, social interaction, parturition, and predator avoidance (NOAA Fisheries 2017e).

Gray Seal

Gray seals occur on both coasts of the Northern Atlantic Ocean and are divided into three major populations (NOAA Fisheries 2016b). The western north Atlantic stock occurs in eastern Canada and the northeastern United States, occasionally as far south as North Carolina. Gray seals inhabit rocky coasts and islands, sandbars, ice shelves and icebergs (NOAA Fisheries 2016b). In the United States, gray seals congregate in the summer to give birth at four established colonies in Massachusetts and Maine (NOAA Fisheries 2016b). From September through May, they disperse and can be abundant as far south as New Jersey. The range of gray seals appears to be shifting as they are regularly being reported further south than they were historically (Rees *et al.,* 2016).

Gray seals are uncommon in Virginia and the Chesapeake Bay. Only 15 gray seal strandings were documented in Virginia from 1988 through 2013 (Barco and Swingle 2014). They are rarely found resting on the rocks around the portal islands of the CBBT from December through April alongside harbor seals. Seal observation surveys conducted at the CBBT recorded one gray seal in each of the 2014/2015 and 2015/2016 seasons (Rees *et al.,* 2016).

Gray seals are a large seal at around 2–3 meters in length, and can dive to depths of 475 meters to capture prey. Like harbor seals, gray seals spend a fair amount of time hauled out on land to rest, thermoregulate, give birth or avoid predators (Rees *et al.,* 2016).

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, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibels (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz), with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- 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;
- Pinnipeds in water; Otariidae (eared seals): generalized hearing is estimated to occur between 60 Hz and 39 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 (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Four marine mammal species (two cetacean and two pinniped (two phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.,* all mysticete species), one is classified as a

mid-frequency cetacean (*i.e.,* all delphinid and ziphiid species) and one is classified as a high-frequency cetacean.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Description of Sound

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 micro pascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

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, 1983). 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 (Hastings and Popper 2005). 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 than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and vibratory pile extraction. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following paragraphs). The distinction between these two sound types is important

because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling, vibratory pile driving, and active sonar systems (such as those used by the United States Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002).

Acoustic Impacts

Please refer to the information given previously (*Description of Sound*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. In this section, we first describe specific manifestations of acoustic effects before providing discussion specific to the proposed construction activities in the next section.

Permanent Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least six dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007).

Temporary threshold shift—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends.

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. 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.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas),* harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)); and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion 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; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,*

2009; Popov *et al.,* 2011). 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. 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 Southall *et al.* (2007), Finneran and Jenkins (2012), and Finneran (2015).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking. Note that any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Behavioral effects—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 showed 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, 2003). 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).

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.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine 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, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the 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 serious fitness consequences. 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 functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). 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. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003).

Non-auditory physiological effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source, where SLs are much higher, 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) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. However, the proposed activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects. Therefore, non-auditory physiological impacts to marine mammals are considered unlikely.

Airborne Acoustic Effects from the Proposed Activities—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. However, these animals would previously have been ''taken'' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple instances of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction.

Potential Pile Driving Effects on Prey—Construction activities would produce continuous (*i.e.,* vibratory pile driving) sounds and pulsed (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance within an undetermined portion of the affected area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species from the proposed project are expected to be minor and temporary due to the relatively short timeframe of pile driving and extraction.

Effects to Foraging Habitat—Pile installation may temporarily impact foraging habitat by increasing turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. The contractor must comply with state water quality

standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.,* 1980). Furthermore, water quality impacts are expected to be negligible because the project area occurs in a high energy, dynamic area with strong tidal currents. Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds will be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

It is important to note that pile driving and removal activities at the project site will not obstruct movements or migration of marine mammals.

In summary, given the relatively short and intermittent nature of sound associated with individual pile driving and extraction events and the relatively small area that would be affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to acoustic sources including impact and vibratory pile driving equipment. There is also some potential for auditory injury (Level A harassment) to result, due to larger predicted auditory injury zones. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving, seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

CTJV's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). CTJV's tunnel project includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183dB	*Cell 2:* $L_{E,LF,24h}$: 199dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

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

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1 µPa²s. 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.

Although CTJV's construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and drilling) sources, the shutdown zones set by the applicant are large enough to ensure Level A harassment will be prevented. To assure the largest shutdown zone can be fully monitored, protected species observers (PSOs) will be positioned in the possible best vantage points during all piling/drilling activities to guarantee a shutdown if marine mammals approach or enter the designated shutdown zone. These measures are described in full detail below in the Proposed Mitigation and Proposed Monitoring and Reporting Sections.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving will generate underwater noise that potentially could result in disturbance to marine mammals swimming by the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source until the source becomes indistinguishable from ambient sound. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. A standard sound propagation model, the Practical Spreading Loss model, was used to estimate the range from pile driving activity to various expected SPLs at potential project structures. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.,* driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance. The TL equation is:

$$TL = 15\log10(R_1/R_2)$$

Where:

TL is the transmission loss in dB,

R_1 is the distance of the modeled SPL from the driven pile, and

R_2 is the distance from the driven pile of the initial measurement.

The degree to which underwater noise propagates away from a noise source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including the sea surface and sediment type. The TL model described above was used to calculate the expected noise propagation from both impact and vibratory pile driving, using representative source levels to estimate the harassment zone or area exceeding specified noise criteria.

Source Levels

Sound source levels from the PTST project site were not available. Therefore, literature values published for projects similar to the PTST project were used to estimate the amount of sound (RMS SPL) that could potentially be produced. The PTST Project will use round, 36-inch-diameter, hollow steel piles and 28-inch wide sheet piles. Data reported in the Compendium of Pile Driving Sound Data (Caltrans 2015) for similar piles size and types are shown in Table 4. The use of an encased bubble curtain is expected to reduce sound levels by 10 dB (NAVFAC 2014, ICF Jones and Stokes 2009). Using data from previous projects (Caltrans 2015) and the amount of sound reduction expected from each of the sound mitigation methods, we estimated the peak noise level (SPLpeak), the root mean squared sound pressure level (RMS SPL), and the single strike sound exposure level (sSEL) for each pile driving scenario of the PTST project (Table 4).

TABLE 4—THE SOUND LEVELS (dB PEAK, dB RMS, AND dB SSEL) EXPECTED TO BE GENERATED BY EACH HAMMER TYPE/MITIGATION

Type of pile	Hammer type	Estimated peak noise level (dB peak)	Estimated cumulative sound exposure level (dB cSEL)	Estimated pressure level (dB RMS)	Estimated single strike sound exposure level (dB sSEL)	Relevant piles at the PTST project	Pile function
36-inch Steel Pipe	Impact [a]	210	NA	193	183	Battered	Mooring dolphins.
36-inch Steel Pipe	Impact with Bubble Curtain [b].	200	NA	183	173	Plumb	Mooring dolphins and Temporary Pier.
24-inch AZ Sheet	Vibratory [c]	182	NA	154	165	Sheet	Containment Structure.
36-inch Steel Pipe and 24-inch AZ Sheet Pile.	Impact w/Bubble Curtain at Pl 1 and Pl 2 [d].	200	NA	186	183	Plumb	Mooring Dolphins, Temporary Pier.

TABLE 4—THE SOUND LEVELS (dB PEAK, dB RMS, AND dB SSEL) EXPECTED TO BE GENERATED BY—Continued EACH HAMMER TYPE/MITIGATION

Type of pile	Hammer type	Estimated peak noise level (dB peak)	Estimated cumulative sound exposure level (dB cSEL)	Estimated pressure level (dB RMS)	Estimated single strike sound exposure level (dB sSEL)	Relevant piles at the PTST project	Pile function
36-inch Steel Pipe and 24-inch AZ Sheet Pile.	Impact w/Bubble Curtain at PI 1 and Vibratory at PI 2.	200	NA	183	183	Plumb and Sheet	Mooring Dolphins, Containment Structure.
36-inch Steel Pipe and 24-inch AZ Sheet Pile.	Vibratory at PI 1 and Impact w/Bubble Curtain at PI 2.	200	NA	183	183	Plumb and Sheet	Mooring Dolphins and Containment Structure.

[a] Examples from Caltrans 2015. These examples were the loudest provided in the Caltrans 2015 compendium for 36-inch-diameter hollow steel piles and in the Proxy Source Sound Levels and Potential Bubble Curtain Attenuation for Acoustic Modeling of nearshore marine Pile Driving at Navy Installations in Puget Sound (NAVFAC 2014).

[b] Estimates of sound produced from impact that use sound mitigation measures were developed by subtracting 10 dB for an encased bubble curtain (ICF Jones and Stokes 2009, NAVFAC 2014). A 10-dB reduction in sound for this sound mitigation method is the minimum that may be expected and, therefore, represents a conservative estimate in sound reduction.

[c] Example from NAVFAC 2017. Average 1-second and 10-second Broadband RMS SPL (dB re 1 μPa) for Vibratory Pile-Driving normalized to 10 meters at JEB Little Creek.

[d] Simultaneous pile driving were determined by applying the rules of dB addition outlined in the Biological Assessment Advanced Training Manual Version 4–2017 (WSDOT 2017).

When NMFS's Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, NMFS's User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

The Impact Pile Driving (Stationary Source: Impulsive, Intermittent) (Sheet E.1) spreadsheet provided by NOAA Fisheries requires inputs for assorted variables which are shown in Table 4. RMS SPL's for simultaneous pile driving were determined using the rules for dB addition (WSDOT 2017). The expected number of steel piles driven during a 24-hour period would be a maximum of eight for plumb piles and three for battered piles for each portal island. Practical spreading was assumed (15logR) and a pulse duration of 0.1 seconds utilized. The distance from the source where the literature based RMS SPL was 10 meters while the number of strikes per pile was 1,000. Model outputs delineating PTS isopleths are provided in Table 6 assuming impact installation of three battered round steel piles per day and eight plumb round steel piles per day as well as vibratory installation of up to eight sheets per day over eight hours.

The Optional User Spreadsheet for vibratory pile driving (non-impulsive, stationary, continuous) (Sheet A) requires inputs for the sound pressure level of the source (dB RMS SPL), the expected activity duration in hours during per 24-hour period, the propagation of the sound and the distance from the source at which the sound pressure level was measured. Calculations also assumed that the expected activity level duration would be eight hours per Portal Island per 24-hour period. Practical spreading was assumed and the measured distance from the sound source was 10 meters.

The inputs from Table 5 determined isopleths where PTS from underwater sound during impact and vibratory driving as shown in Table 6.

TABLE 5—INPUTS FOR DETERMINING DISTANCES TO CUMULATIVE PTS THRESHOLDS

Spreadsheet tab used	E.1: Impact pile driving (stationary source: impulsive, intermittent)	E.1: Impact pile driving (stationary source: impulsive, intermittent)	A: Stationary source: non-impulsive, continuous	E.1: Impact pile driving (stationary source: impulsive, intermittent)	E.1: Impact pile driving (stationary source: impulsive, intermittent
Pile Type and Hammer Type.	36-in steel impact (battered pile).	36-in steel impact w/bubble curtain (plumb pile).	28-in sheet vibratory	36-in steel impact w/bubble curtain at P1 and P2 (plumb piles).	36-in steel impact w/bubble curtain at P1 (plumb pile) and sheet pile vibratory at P2.
Source Level (RMS SPL)	193	183	154	186	183.
Weighting Factor Adjustment (kHz).	2	2	2.5	2	2.
Number of strikes in 1 h OR number of strikes per pile.	1,000	1,000	NA	1,000	1,000.
Activity Duration (h) within 24-h period OR number of piles per day.	3 steel piles	8 steel piles	8 hours/8 sheets	8 steel piles per portal island.	8 steel piles.
Propagation (xLogR)	15	15	15	15	15.
Distance of source level measurement (meters).	10	10	10	10	10.
Pulse Duration (seconds)	0.1	0.1	NA	0.1	0.1.

TABLE 6—RADIAL DISTANCE (METERS) FROM PILE DRIVEN FROM PORTAL ISLAND 1 (PI 1) AND PORTAL ISLAND 2 (PI 2) TO PTS ISOPLETHS *

Hammer type	Low-frequency cetaceans		Mid-frequency cetaceans		High-frequency cetaceans		Phocid pinnipeds		Applicable piles in the PTST project
	Island 1	Island 2	Island 1	Island 2	Island 1	Island 2	Island 1	Island 2	
Impact (battered) at PI 1 OR PI 2	2,077.2	2,077.2	73.9	73.9	2,474.3	2,474.3	1,111.6	1,111.6	Battered Piles for Mooring Dolphins.
Impact with Bubble Curtain (plumb) at PI 1 OR PI 2.	860.6	860.6	30.6	30.6	1,025.1	1,025.1	460.5	460.5	Plumb Piles for Temporary Pier and Mooring Dolphins.
Vibratory	9.3	9.3	0.8	0.8	13.8	13.8	5.7	5.7	Sheet Piles for Containment.
Impact w/Bubble Curtain (plumb) simultaneous at PI 1 and PI 2.	1,363.9	1,363.9	48.5	48.5	1,624.7	1,624.7	729.9	729.9	Plumb Piles for temporary pier.
Impact w/Bubble Curtain (plumb) simultaneous at PI 1 and Vibratory at PI 2.	860.6	9.3	30.6	0.8	1,025.1	13.8	460.5	5.7	Plumb Piles for Temporary Pier and Mooring Dolphins; Sheet Pile for Containment.
Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 Simultaneous.	9.3	860.6	0.8	30.6	13.8	1,025.1	5.7	460.5	Plumb Piles for temporary pier and Mooring Dolphins; Sheet Pile for Containment.

* Distances based on up to 3 battered round steel piles per day, 8 plumb round steel piles per day, and up to 8 sheets per day over 8 hours.

Table 7 shows the radial distance to Level B isopleths and Table 8 shows the areas of ensonified Level B zones associated with each of the planned driving scenarios.

TABLE 7—RADIAL DISTANCE (METERS) FROM PILE DRIVEN TO LEVEL B ISOPLETHS FOR CETACEANS AND PINNIPEDS

Hearing group sound threshold (dB)	Hammer type driving scenario	Radial distance (m) 160 (impact)/ 120 (vibratory)		Applicable piles in the PTST project
		Island 1	Island 2	
PTS Isopleth to threshold (meters)	Impact (battered)	1,584.9	1,584.9	Battered Piles for Mooring Dolphins.
PTS Isopleth to threshold (meters)	Impact with Bubble Curtain	341.5	341.5	Plumb Piles for Temporary Pier and Mooring Dolphins.
PTS Isopleth to threshold (meters)	Vibratory	1,847.8	1,847.8	Sheet Piles for Containment.
PTS Isopleth to threshold (meters)	Impact w/Bubble Curtain (plumb) at PI 1 and PI 2 simultaneous.	541.2	541.2	Plumb Piles for temporary pier.
PTS Isopleth to threshold (meters)	Impact w/Bubble Curtain (plumb) at PI 1 and Vibratory at PI 2 simultaneous.	341.5	1,847.8	Plumb Piles for Temporary Pier and Mooring Dolphins; Sheet Pile for Containment.
PTS Isopleth to threshold (meters)	Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 simultaneous.	1,847.8	341.5	Plumb Piles for temporary pier and Mooring Dolphins; Sheet Pile for Containment.

TABLE 8—LEVEL B AREAS (km^2) FOR ALL PILE DRIVING SCENARIOS PLANNED FOR USE DURING PTST PROJECT

Scenario	Zone size (km^2)
Impact Plumb	0.45
Impact Simultaneous Plumb	2.08
Impact Battered	8.27
Vibratory Sheet	12.27
Simultaneous Vibratory Sheet and Impact Plumb	12.27

To calculate level B disturbance zones for airborne noise from pile driving, the spherical spreading loss equation (20LogR) was used to determine the Level B zones. The airborne noise threshold for behavioral harassment for all pinnipeds, except harbor seals, is 100 dB RMS re 20 µPa (unweighted) and for harbor seals is 90 dB RMS re 20 µPa (unweighted).

Literature estimates were used to estimate the amount of in-air sound produced from driving a pile above the MHW line (Laughlin 2010a,b). Hollow steel piles that were 30 inches in diameter were used as a close proxy to the 36-inch-diameter hollow steel piles that will be driven at the PTST project. AZ 24-inch sheet pile was used as a proxy for the sheet pile to be driven during the PTST Project (Table 9). Using the spherical spreading loss model with these estimates, Level B isopleths were estimated as shown below in Table 9. Note that the take estimates for pinnipeds were based on surveys which included counts of hauled out animals. Therefore, to avoid double counting, airborne exposures are not evaluated further for purposes of estimating take under the proposed IHA. During any upland pile driving before issuance of the IHA, however, shutdown will occur whenever pinnipeds enter into the Level B zones as depicted below to avoid unauthorized take.

TABLE 9—RADIAL DISTANCE (METERS) FROM PILE DRIVEN ABOVE MHW TO LEVEL B SOUND THRESHOLDS FOR HARBOR SEALS AND GRAY SEALS

Source	Sound level	Level A harassment zone (m)	Level B harassment zone (m)	
			Harbor Seals	Gray Seals
Impact Hammer 36-inch Pile	110 dB_{L5SEQ} at 15m [a]	N/A	150	47

TABLE 9—RADIAL DISTANCE (METERS) FROM PILE DRIVEN ABOVE MHW TO LEVEL B SOUND THRESHOLDS FOR HARBOR SEALS AND GRAY SEALS—Continued

Source	Sound level	Level A harassment zone (m)	Level B harassment zone (m)	
			Harbor Seals	Gray Seals
Vibratory Hammer Assumed equivalent to 24-in sheet.	92 dB_{L5SEQ} at 15m	N/A	19	6

[a] Laughlin 2010a,b as cited in City of Unalaska 2016 IHA for Unalaska Marine Center.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Humpback whales are relatively rare in the Chesapeake Bay but may be found within or near the Chesapeake Bay at any time of the year. Between 1998 and 2014, 11 humpback whale stranding were reported within the Chesapeake Bay (Barco and Swingle 2014). Strandings occurred in all seasons, but were most common in the spring. There is no existing density data for this species within or near the Chesapeake Bay. Populations in the mid-Atlantic have been estimated for humpback whales off the coast of New Jersey with a density of 0.000130 per square kilometer (Whitt *et al.,* 2015). A similar density may be expected off the coast of Virginia.

Bottlenose dolphins are abundant along the Virginia coast and within the Chesapeake Bay and can be seen seen annually in Virginia from May through October. Approximately 65 strandings are reported each year (Barco and Swingle 2014). Stranded bottlenose dolphins have been recorded as far north as the Potomac River in the Chesapeake Bay (Blaylock 1985). A 2016 Navy report on the occurrence, distribution, and density of marine mammals near Naval Station Norfolk and Virginia Beach, Virginia provides seasonal densities of bottlenose dolphins for inshore areas in the vicinity of the project area (Engelhaupt *et al.,* 2016) (Table 10).

There is little data on the occurrence of harbor porpoises in the Chesapeake Bay. Harbor porpoises are the second most common marine mammal to strand in Virginia waters with 58 reported strandings between 2007 through 2016. Unlike bottlenose dolphins, harbor porpoises are found in Virginia in the cooler months, primarily late winter and early spring, and they strand primarily on ocean facing beaches (Barco *et al.,* 2017).

Harbor seals are the most common seal in Virginia (Barco and Swingle 2014). They can be seen resting on the rocks around the portal islands of the CBBT from December through April. They are unlikely to occur in the project area in the summer and early fall. Survey data for in-water and hauled out harbor seals was collected by the United States Navy at the CBBT portal islands from 2014 through 2016 (Rees *et al.,* 2016) (Table 12). Surveys reported 112 harbor seals in the 2014/2015 season and 184 harbor seals during the 2015/2016 season. (Rees *et al.,* 2016).

Gray seals are uncommon in Virginia and the Chesapeake Bay with only 15 gray seal strandings documented in Virginia from 1988–2013 (Barco and Swingle 2014). They are rarely found resting on the rocks around the portal islands of the CBBT from December through April alongside harbor seals. Observation surveys conducted by the Navy at the CBBT portal islands recorded one gray seal in each of the 2014/2015 and 2015/2016 seasons (Rees *et al.,* 2016).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

Humpback Whale

As noted previously, humpback whales are rare in the Chesapeake Bay, although they do occur. Density off of the coast of New Jersey, and presumably Virginia and Maryland, is extremely low (0.00013 animals/km^2). Because density is extremely low, the CTJV is requesting and NMFS is proposing one Level B take every two months for the duration of in-water pile driving activities. Pile driving activities are expected to occur over a 10-month period. Therefore, a total of 5 Level B takes of humpback whales is proposed by NMFS.

Bottlenose Dolphin

Total number of takes for bottlenose dolphin were calculated using the seasonal density described above (individuals/km^2/day) of animals within the inshore study area at the mouth of the Chesapeake Bay (Englehaupt *et al.,* 2016). Project specific dolphin densities were calculated within the respective Level B harassment zone and season. Densities were then used to calculate the seasonal takes based on the number and type of pile driving days per season. For example, the density of dolphins in summer months is assumed to be 3.55 dolphins/km^2 * 2.08 km^2 (harassment zone for Simultaneous Plumb Pile driving as shown in Table 8) = 7.38 dolphins/km^2 per day in summer as shown in Table 11. This density was then multiplied by number of simultaneous plumb pile driving days to provide takes for that season *(e.g.* 7.38 dolphins/km^2 * 24 days = 177 estimated summer exposures from simultaneous plumb pile driving). The sum of the anticipated number of seasonal takes resulted in 3,708 estimated exposures as shown in Table 10 split among three stocks. There is insufficient information to apportion the takes precisely to the three stocks present in the area. Given that members of the NNCES stock are thought to occur in or near the Bay in very small numbers, and only during July and August, we will conservatively assume that no more than 100 of the takes will be from this stock. Most animals from this stock spend the summer months in Pamlico Sound and the range of species extends as far south as Beaufort, NC. In colder months, animals are thought to go no farther north than Pamlico Sound. Since members of the southern migratory coastal and northern migratory coastal stocks are known to occur in or near the Bay in greater numbers, we will conservatively assuming that no more than half of the remaining animals (1,804) will accrue to either of these stocks.). The largest level B zone for mid-frequency cetaceans occurs during

vibratory driving and extends out 1,847.8 meters. The largest Level A isopleth is 73.9 meters and would occur during installation of three battered piles on a single day. NMFS proposes a shutdown zone that extends 200 m, so no Level A take is proposed.

TABLE 10—SUMMARY OF INFORMATION USED TO CALCULATE BOTTLENOSE DOLPHIN EXPOSURES

Season	Density (individuals per km^2)	Estimated number of pile driving days	Total number of requested takes
Summer 2018	3.55	45	879
Fall 2018	3.88	77	2,242
Winter 2019	0.63	70	464
Spring 2019	1.00	10	123
Total	.....	.....	3,708

TABLE 11—SEASONAL DAILY TAKE BY DRIVING SCENARIO (SEASONAL DENSITY * SCENARIO ZONE SIZE) AND ESTIMATED NUMBER OF DRIVING DAYS PER SEASON

Season	Impact plumb daily take (days/season)	Impact simultaneous plumb daily take (days/season)	Impact batter daily take (days/season)	Vibratory sheet daily take (days/season)	Simultaneous vibratory sheet and impact plumb daily take (days/season)	Number of pile driving days
Summer	1.61 (0)	7.38 (24)	29.37 (15)	43.55 (6)	43.55 (0)	45
Fall	1.76 (0)	8.06 (36)	32.10 (0)	47.60 (41)	47.60 (0)	77
Winter	0.28 (0)	1.31 (12)	5.21 (0)	7.73 (34)	7.73 (24)	70
Spring	0.45 (0)	2.08 (0)	8.27 (0)	12.27 (9)	12.27 (1)	10

Harbor Porpoise

Little is known about the abundance of arbor porpoises in the Chesapeake Bay. A recent survey of the Maryland Wind Energy Area found that porpoises occur frequently offshore January to May (Wingfield *et al.,* 2017). This finding reflects the pattern of winter and spring strandings in the mid-Atlantic. NMFS will assume that there is a porpoise sighting once during every two months of operations. That would equate to five sightings over ten months. Assuming an average group size of two results in a total estimated take of 10 porpoises. Harbor porpoises are members of the high-frequency hearing group which would have Level A isopleths as large of 2,474 meters during impact installation of three battered piles per day. Given the relatively large Level A zones during impact driving, NMFS proposes to authorize the take of 4 porpoises by Level A take and 6 by Level B take.

Harbor Seal

The number of harbor seals expected to be present in the PTST project area was estimated using survey data for in-water and hauled out seals collected by the United States Navy at the portal islands from 2014 through 2016 (Rees *et al.,* 2016). The survey data were used to estimate the number of seals observed per hour for the months of January–May and October–December between 2014 and 2016. Seal density data are in the format of seal per unit time. Therefore, potential seal exposures were calculated as total number of potential seals per pile driving day (8 hours) multiplied by the number of pile driving days per month. For example, in November seal density data are reported at 0.1 seals per hour, within an 8-hour work day there may be 0.8 seals * 27 work days in November, resulting in 22 seal takes. The anticipated numbers of monthly exposures were summed. NMFS proposes to authorize the take of 7,537 harbor seals (Table 12). The largest level B zone would occur during vibratory driving and extends out 1,847.8 meters from the sound source. The largest Level A isopleth is 1,111.6 meters which would occur during impact installation of three battered piles. The smallest Level A zone during impact driving is 115 meters which would occur when a single steel pile is impact driven at the same time that vibratory driving of sheet piles is occurring. NMFS proposes a shutdown zone for harbor seals of 50 meters since seals are common in the project area and are known to approach the shoreline. A larger shutdown zone would likely result in multiple shutdowns and impede the project schedule. NMFS will assume that 20 percent of the exposed seals will occur within the Level A zone specified for a given scenario. Therefore, NMFS proposes to authorize the Level A take of 1,507 and Level B take of 6,030 harbor seals.

TABLE 12—CALCULATION OF THE NUMBER OF HARBOR SEAL EXPOSURES

Month	Estimated seals per work day	Total pile driving days per month (includes upland driving)	Total number of requested takes
June 2018	Seals not expected to be present.		
July 2018	Seals not expected to be present.		
August 2018	Seals not expected to be present.		
September 2018	Seals not expected to be present.		

TABLE 12—CALCULATION OF THE NUMBER OF HARBOR SEAL EXPOSURES—Continued

Month	Estimated seals per work day	Total pile driving days per month (includes upland driving)	Total number of requested takes
October 2018	Seals not expected to be present.		
November 2018	0.8	27	22
December 2018	20.8	24	499
January 2019	48	42	2,016
February 2019	96	42	4,032
March 2019	88	10	968

Gray Seals

The number of gray seals potentially exposed to Level B harassment in the project area was calculated using the same methodology was used to estimate harbor seal exposures. Survey data recording gray seal observations was collected by the U.S. Navy at the portal islands from 2014 through 2016 (Rees *et al.,* 2016). Potential gray seal exposures were calculated as the number of potential seals per pile driving day (8 hours) multiplied by the number of pile driving days per month. The anticipated numbers of monthly exposures as shown in Table 13 were summed. Therefore, NMFS proposes to authorize take of 67 gray seals by Level B harassment. The Level A isopleths for gray seals are identical to those for harbor seals. Similarly, with a shutdown zone of 50 meters, NMFS proposes to authorize the Level A take of 20 percent of gray seals. Therefore, NMFS proposes to authorize the Level A take of 13 and Level B take of 54 gray seals.

TABLE 13—CALCULATION FOR THE NUMBER OF GRAY SEAL EXPOSURES

Month	Estimated seals per work day	Total pile driving days per month (includes upland driving)	Harbor seal takes
June 2018	Seals not expected to be present.		
July 2018	Seals not expected to be present.		
August 2018	Seals not expected to be present.		
September 2018	Seals not expected to be present.		
October 2018	Seals not expected to be present.		
November 2018	0	27	0
December 2018	0	24	0
January 2019	0	42	0
February 2019	1.6	42	67
March 2019	0	11	0

Table 14 provides a summary of proposed authorized Level B takes as well as the percentage of a stock or population proposed for take.

TABLE 14—PROPOSED AUTHORIZED TAKE AND PERCENTAGE OF STOCK OR POPULATION

Species	Stock	Proposed authorized Level A takes	Proposed authorized Level B takes	Percent population
Humpback whale	Gulf of Maine	.....	5	0.61
Bottlenose dolphin	WNA Coastal, Northern Migratory	.....	1,804	16
	WNA Coastal, Southern Migratory	.....	1,804	20
	NNCES	.....	100	12
Harbor porpoise	Gulf of Maine/Bay of Fundy	4	6	<0.01
Harbor seal	Western North Atlantic	1,507	6,030	10
Gray seal	Western North Atlantic	13	54	<0.01

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means

of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

• *Pile Driving Delay/Shutdown Zone*—For in-water heavy machinery work (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), a minimum 10 meters shutdown zone shall be implemented. If a marine mammal comes within 10 meters of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Vibratory pile driving; (2) movement of the barge to the pile location; (3) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); or (4) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull).

• *Non-authorized Take Prohibited*—If a species for which authorization has not been granted (*e.g.,* North Atlantic right whale, fin whale, harbor porpoise) or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the Level B Isopleth, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

• *Use of Impact Installation*—During pile installation of hollow steel piles, an impact hammer rather than a vibratory hammer will be used to reduce the duration of pile driving decrease the ZOI for marine mammals.

• *Cushion Blocks*—Use of cushion blocks will be required during impact installation. Cushion blocks reduce source levels and, by association, received levels, although exact decreases in sound levels are unknown.

• *Use of Bubble Curtain*—An encased bubble curtain will be used for impact installation of plumb round piles at water depths greater than 3 m (10 ft). Bubble curtains will not function effectively in shallower depths.

• *Soft-Start*—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes. The CTJV will start the bubble curtain prior to the initiation of impact pile driving. The contractor will provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent sets.

• *Establishment of Additional Shutdown Zones and Monitoring Zones*—For all impact and vibratory pile driving shutdown and monitoring zones will be established and monitored.

• CTJV will establish a shutdown zone of 200 meters for common dolphins and harbor porpoises and 50 meters for harbor and gray seals. The shutdown zones for humpback whales are depicted in Table 16.

• For all impact and vibratory pile driving shutdown and monitoring zones will be established and monitored. Level B zones are shown in Table 15.

TABLE 15—RADIAL DISTANCE (METERS) FROM PILE DRIVEN TO LEVEL B ISOPLETHS FOR CETACEANS AND PINNIPEDS

Hammer type driving scenario	Radial distance (m)	
	Island 1	Island 2
Impact (battered)	1,585	1,585
Impact with Bubble Curtain	350	350
Vibratory	1,850	1,850
Impact w/Bubble Curtain (plumb) at PI 1 and PI 2 simultaneous	540	540
Impact w/Bubble Curtain (plumb) at PI 1 and Vibratory at PI 2 simultaneous	340	1,850
Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 simultaneous	1,850	340

• The Level A zones will depend on the number of piles driven and the presence of marine mammals per 24-hour period. Up to 3 battered piles or 8 plumb steel piles will be driven per 24-hour period using the following adaptive monitoring approach. Monitoring will begin each day using the three-pile Level A zone for battered piles (or eight-pile zone for plumb piles). If after the first pile is driven, no marine mammals have been observed in the Level A zone, then the Level A zone will reduce to the two-pile zone. If no marine mammals are observed within the two-pile shutdown zone during the driving of the second pile, then the Level A zone will reduce to the one-pile zone. However, if a mammal is observed approaching or entering the three-pile Level A zone during the driving of the first pile, then the three-pile Level A zone will be monitored for the remainder of pile driving activities for that day. Likewise, if a marine mammal is observed within the two-pile but not the three-pile Level A zone, then the two-pile Level A zone will be monitored for the remainder of pile driving activities for that day. The same protocol will be followed for installation of up to 8 plumb piles per day.

The Level A isopleths for all authorized species are shown in Table 16. Isopeths associated with low-frequency cetaceans will signify shutdown zones.for humpback and fin whales.

TABLE 16—RADIAL DISTANCE (METERS) FROM PILE DRIVEN TO PTS ZONES FOR CETACEANS AND PHOCID PINNIPEDS FOR SCENARIOS INVOLVING IMPACT HAMMER

Class of marine mammals	Piles per day	Impact hammer (battered pile)	Impact hammer with bubble curtain (plumb pile)	Impact hammer with bubble curtain simultaneous (plumb pile)	Simultaneous driving—vibratory hammer and impact hammer with bubble curtain (plumb pile)
Low-Frequency Cetaceans*	8	N/A	860.6	1,363	860.6
	7	N/A	787.3	1,247	787.3
	6	N/A	710.4	1,125	710.4
	5	N/A	629.1	997	629.1
	4	N/A	542.1	859	542.1
	3	2,077.2	447.5	709	447.5
	2	1,585.2	341.5	541	341.5
	1	998.6	215.1	341	215.1
Mid-Frequency Cetaceans	8	N/A	30.6	48	30.6
	7	N/A	28.0	44	28.0
	6	N/A	25.3	40	25.3
	5	N/A	22.4	35	22.4
	4	N/A	19.3	30	19.3
	3	73.9	15.9	25	15.9
	2	56.4	12.1	19	12.1
	1	35.5	7.7	12.1	7.7
High Frequency Cetaceans	8	N/A	1,025.1	1,624	1,025.1
	7	N/A	937.8	1,4861	937.8
	6	N/A	846.2	1,341	846.2
	5	N/A	749.4	1,187	749.4
	4	N/A	645.8	1,023	645.8
	3	2,474.3	533.1	844	533.1
	2	1,888.3	406.8	644	406.8
	1	1,189.5	256.3	406	256.3
Phocid Pinnipeds	8	N/A	460.5	729	460.5
	7	N/A	412.3	667	412.3
	6	N/A	380.2	602	380.2
	5	N/A	336.7	533	336.7
	4	N/A	290.1	459	290.1
	3	1,111.6	239.5	379	239.5
	2	848.3	182.8	289	182.8
	1	534.4	115.1	182	115.1

* These isopleths serve as shutdown zones for all large whales, including humpback and fin whales.

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.

Proposed Monitoring and Reporting

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

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

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

Visual Monitoring

The following visual monitoring measures are proposed in the IHA:

- Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone.
- If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.
- Monitoring distances, in accordance with the identified shutdown zones, Level A zones and Level B zones, will be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.
- Monitoring locations will be based on land both at Portal Island No. 1 and Portal Island No. 2 during simultaneous driving. During non-simultaneous a single monitoring location will be identified on the Portal Island with pile driving activity.
- Monitoring will be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case, monitoring will be required 30 minutes prior to restarting pile installation.
- If marine mammals are observed, their location within the zones, and their reaction (if any) to pile activities will be documented.
- If weather or sea conditions restrict the observer's ability to observe, or become unsafe, pile installation will be suspended until conditions allow for monitoring to resume.
- For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone, the pile in progress will be completed and then pile driving suspended until visibility conditions improve.
- Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. CVTJV shall adhere to the following conditions when selecting observers:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel).

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities.

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience.

(4) CTJV shall submit PSO CVs for approval by NMFS.

- CTJV will ensure that observers have the following additional qualifications:

(1) Ability to conduct field observations and collect data according to assigned protocols.

(2) Experience or training in the field identification of marine mammals, including the identification of behaviors.

(3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

(4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.

(5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- For each marine mammal sighting:

(1) Species, numbers, and, if possible, sex and age class of marine mammals;

(2) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(3) Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(4) Estimated amount of time that the animals remained in the Level A Level B zone.

- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay); and
- Other human activity in the area.
- A summary of the following:

(1) Total number of individuals of each species detected within the Level A and Level B Zone, and estimated as taken if correction factor is applied.

(2) Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level A and Level B Zone, and estimated as taken, if correction factor is applied.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, CTJV would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with CTJV to determine what is necessary to

minimize the likelihood of further prohibited take and ensure MMPA compliance. CTJV would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CTJV discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), CTJV would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with CTJV to determine whether modifications in the activities are appropriate.

In the event that CTJV discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CTJV would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS New England/Mid-Atlantic Regional Stranding Coordinator, within 24 hours of the discovery. CTJV would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

CTJV's planned pile driving activities are highly localized. Only a relatively small portion of the Chesapeake Bay may be affected. The project is not expected to have significant adverse effects on marine mammal habitat. No important feeding and/or reproductive areas for marine mammals are known to be near the project area. Project-related activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of their foraging range, but because of the relatively small impacted area of the habitat range utilized by each species that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

A limited number of animals could experience Level A harassment in the form of PTS if they remain within the Level A harassment zone during certain impact driving scenarios. The sizes of the Level A zones are dependent on the number of steel piles driven in a 24-hour period. Up to 8 steel plumb piles or 3 steel battered piles could be driven in a single day, which would result in a relatively large Level A zones. (If fewer piles are driven per day then the Level A zones would be smaller) . However, an animal would have to be within the Level A zones during the driving of all 8 plumb or 3 battered piles. This is unlikely, as marine mammals tend to move away from sound sources. Furthermore, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in numerous other locations on the east coast, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in permanent hearing impairment or to significantly disrupt foraging behavior. Furthermore. Level B harassment will be reduced through use of mitigation measures described herein.

CTJV will employ noise attenuating devices (*i.e.,* bubble curtains, pile caps) during impact driving of plumb steel piles. During impact driving of both plumb and battered piles, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reduces any possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from a sound source. PSOs will be stationed on a portal island whenever pile driving operations are underway at that island. The portal island locations provide a relatively clear view of the shutdown zones as well as monitoring zones. These factors will limit exposure of animals to noise levels that could result in injury.

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 serious injury or mortality is anticipated;
- The area of potential impacts is highly localized;

- No adverse impacts to marine mammal habitat;
- The absence of any significant habitat within the project area, including rookeries, or known areas or features of special significance for foraging or reproduction;
- Anticipated incidents of Level A harassment would likely be mild;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The anticipated efficacy of the required mitigation measures in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS has preliminary determined that the estimated Level B take of humpback whale is 0.61 percent of the Gulf of Maine stock ; take of harbor seals is 10 percent of the Western North Atlantic stock; and take of gray seals is <0.01 percent of the Western North Atlantic stock. Estimated take of bottlenose dolphins (3,708), with 100 takes accruing to the NNCES stock and no more than half (1,804) of the remaining takes accruing to either of two migratory coastal stocks represents 12 percent of the NCCES stock (population 823), 16 percent of the Western North Atlantic northern migratory coastal stock (pop. 11,548) and 20 percent of the Western North Atlantic southern migratory coastal stock (pop. 9,173). Additionally, some number of the anticipated takes are likely to be repeat sightings of the same individual, lowering the number of *individuals* taken.

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 preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

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

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CTJV for conducting pile driving and removal activities as part of the PTST project between June 1, 2018 and March 31, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from June 1, 2018 through May 31, 2019. This IHA is valid only for pile driving and extraction activities associated with the PTST project.

2. General Conditions.

(a) A copy of this IHA must be in the possession of CTJV, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are of harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), bottlenose dolphin (*Tursiops spp.*), harbor porpoise (*Phocoena phocoena*) and humpback whale (*Megaptera novaeangliae*).

(c) The taking, by Level A and Level B harassment, is limited to the species listed in condition 2(b). See Table 14 for number of takes authorized.

(d) The take of any other species not listed in condition 2(b) of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) CTJV shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

3. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures:

(a) Time Restrictions—For all in-water pile driving activities, CTJV shall operate only during daylight hours.

(b) Use of Bubble Curtain.

(i) CTJV shall employ an encased bubble curtain during impact pile driving of plumb steel piles in water depths greater than 3 m (10 ft).

(c) Use of Soft-Start.—CTJV shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(d) Use of cushion blocks shall be required during impact installation.

(e) Establishment of Shutdown Zones.

(i) CTJV shall establish a shutdown zone of 200 meters harbor porpoise and common dolphin.

(ii) CTJV shall establish a shutdown zone of 50 meters for harbor seals.

(iii) CTJV shall establish shutdown zones for large whales (*i.e.* humpback, fin whale) according to low-frequency isopleths provided in Table 16.

(iv) If a marine mammal comes within or approaches the shutdown zone, pile driving operations shall cease.

(v) Pile driving and removal operations shall restart once the marine mammal is visibly seen leaving the zone or after 15 minutes have passed with no sightings.

(vi) For in-water heavy machinery work (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), a minimum 10 meters shutdown zone shall be implemented. If a marine mammal comes within 10 meters of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Vibratory pile driving; (2) movement of the barge to the pile location; (3) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); or (4) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull).

(vii) Shutdown shall occur if a species for which authorization has not been granted or for which the authorized numbers of takes have been met approaches or is observed within the pertinent take zone.

(viii) If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

(ix) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the designated Level B Isopleth pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in 3(e)(v) above, has elapsed.

(f) Establishment of Level A and Level B Harassment Zones.

(i) CTJV shall establish and monitor a level B zone according to values depicted in Table 15 during all driving activities.

(ii) CTJV shall use an adaptive approach to establish Level A zones during impact pile driving.

(1) The number of plumb piles planned for a given day determines initial Level A zone size as shown in Table 16.

(2) If after the first pile is driven, no marine mammals have been observed in the Level A zone, then the Level A zone shall be reduced to the Level A zone associated with the next lowest number of piles driven per day. If no marine mammals are observed within that zone, the Level A zone shall again be reduced to the next lowest number of piles per day. This trend shall continue until an animal is seen approaching or entering a specified shutdown zone.

(3) If Level A take does occur, the Level A zone size in effect during the initial Level A take shall remain in place for the remainder of the day.

(4) Pile driving activities shall not be conducted when weather/observer conditions do not allow for adequate sighting of marine mammals within the monitoring zone (*e.g.* lack of daylight/fog).

(5) In the event of conditions that prevent the visual detection of marine mammals, impact pile driving shall be curtailed, but pile in progress shall be completed and then pile driving suspended until visibility conditions improve.

4. Monitoring

The holder of this Authorization is required to conduct visual marine mammal monitoring during pile driving activities.

(a) Visual Marine Mammal Observation—CTJV shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. Visual monitoring shall include the following:

(i) Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone.

(ii) Protected Species Observers (PSOs) shall be positioned at the best practicable vantage points, taking into consideration security, safety, and space limitations. The PSOs shall be stationed in a location that shall provide adequate visual coverage for the shutdown zone and monitoring zones.

(iii) Monitoring locations shall be based on land both at Portal Island No. 1 and Portal Island No. 2 during simultaneous driving. During non-simultaneous driving a single monitoring location shall be identified on the Portal Island with pile driving activity.

(iv) Monitoring distances, in accordance with the identified shutdown zones, Level A zones and Level B zones, shall be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions

(v) CTJV shall adhere to the following observer qualifications:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel).

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities.

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience.

(4) CTJV shall submit PSO CVs for approval by NMFS.

(vi) CTJV shall ensure that observers have the following additional qualifications:

(1) Ability to conduct field observations and collect data according to assigned protocols.

(2) Experience or training in the field identification of marine mammals, including the identification of behaviors.

(3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

(4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.

(5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

5. Reporting

(a) A draft marine mammal monitoring report shall be submitted to NMFS within 90 days after the completion of pile driving and removal activities or a minimum of 60 days prior to any subsequent IHAs. A final report shall be prepared and submitted to the

NMFS within 30 days following receipt of comments on the draft report from the NMFS. If no comments are received from NMFS within 30 days, the draft final report shall constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

(b) The report shall include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

(i) Date and time that monitored activity begins or ends;

(ii) Construction activities occurring during each observation period;

(iii) Weather parameters (*e.g.,* percent cover, visibility);

(iv) Water conditions (*e.g.,* sea state, tide state);

(v) Total number of individuals of each species detected within the Level A and Level B Zone, and estimated taken if a correction factor is used;

(vi) Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level A and Level B Zone, and estimated as taken if correction factor is used;

(vii) Each marine mammal sighting shall include the following:

(1) Species, numbers, and, if possible, sex and age class of marine mammals;

(2) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(3) Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(4) Estimated amount of time that the animals remained in the Level A and/or Level B zone;

(5) Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);

(6) Other human activity in the area.

(c) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, CTJV would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the following information:

(i) Description of the incident;

(ii) Environmental conditions (*e.g.,* Beaufort sea state, visibility);

(iii) Description of all marine mammal observations in the 24 hours preceding the incident;

(iv) Species identification or description of the animal(s) involved;

(v) Fate of the animal(s); and

(vi) 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 CTJV to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CTJV would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

(d) In the event that CTJV discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), CTJV would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with CTJV to determine whether modifications in the activities are appropriate.

(e) In the event that CTJV discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CTJV would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS New England/Mid-Atlantic Regional Stranding Coordinator, within 24 hours of the discovery. CTJV would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

6. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed PTST project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG067

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from Chevron for authorization to take marine mammals incidental to incidental to pile driving and removal associated with the Long Wharf Maintenance and Efficiency Project (WMEP) in San Francisco Bay, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 30, 2018.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/node/23111* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

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

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

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

Summary of Request

On February 1, 2018, NMFS received a request from Chevron for an IHA to take marine mammals incidental to pile driving and pile removal associated with the WMEP in San Francisco Bay, California. Chevron's request is for take of seven species by Level B and Level A harassment. Neither Chevron nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Chevron for similar work (82 FR 27240; June 17, 2017). However, the construction schedule and scope was revised and no work was conducted under that IHA. The revised schedule includes the use of piles that were not planned for use under the existing IHA. Therefore, a new IHA is required. This proposed IHA would cover one year of a larger project for which Chevron intends to request additional take authorizations for subsequent facets of the project.

Description of Proposed Activity

Overview

Chevron's Richmond Refinery Long Wharf (Long Wharf) located in San Francisco Bay, is the largest marine oil terminal in California. The Long Wharf has existed in its current location since

the early 1900s (Figure 1–1 in Application). The existing configuration of these systems have limitations to accepting more modern, fuel efficient vessels with shorter parallel mid-body hulls and in some cases do not meet current MOTEMS requirements. The purpose of the proposed WMEP is to comply with current MOTEMS requirements and to improve safety and efficiency at the Long Wharf.

Impact and vibratory pile driving and removal will be employed during the proposed construction project. These actions could produce underwater sound at levels that could result in the injury or behavioral harassment of marine mammal species. Underwater construction activities would occur between June 1, 2018 and November 30, 2018.

Dates and Duration

Construction activities would start in 2018, and be complete by the fourth quarter 2022. Pile driving activities would be timed to occur within the standard NMFS work windows for Endangered Species Act (ESA)-listed fish species (June 1 through November 30) over multiple years. An estimated 28 days of pile driving activity are planned for 2018. Additional work in the future will require subsequent IHAs. The IHA would be effective from June 1, 2018 through May 31, 2019.

Specific Geographic Region

The Long Wharf is located in San Francisco Bay (the Bay) just south of the eastern terminus of the Richmond-San Rafael Bridge (RSRB) in Contra Costa County. The wharf is located in the northern portion of the central bay, which is generally defined as the area between the RSRB, Golden Gate Bridge, and San Francisco-Oakland Bay Bridge (SFOBB).

Detailed Description of Specific Activity

The proposed project would involve modifications at four berths (Berths 1, 2, 3, and 4). Modifications to the Long Wharf include replacing gangways and cranes, adding new mooring hooks and standoff fenders, adding new dolphins and catwalks, and modifying the fire water system at Berths 1, 2, 3 and/or 4, as well as the seismic retrofit to the Berth 4 loading platform. The type and numbers of piles to be installed, as well as those that will be removed during the 2018–2022 period are summarized in Table 1. This work would be covered under multiple IHAs.

The combined modifications to Berths 1 to 4 would require the installation of 141 new concrete piles to support new and replacement equipment and their associated structures. The Berth 4 loading platform would add eight, 60-inch diameter steel piles as part of the seismic retrofit. The project would also add four clusters of 13 composite piles each (52 total) as markers and protection of the new batter (driven at an angle) piles on the east side of the Berth 4 retrofit. The project would remove 106 existing timber piles, two existing 18-inch and two existing 24-inch concrete piles. A total of 12 temporary piles would also be installed and removed during the seismic retrofit of Berth 4.

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Table 1. Planned Pile Installation and Removal for Entire Project 2018-2022.

Item		Description	No. Piles	Pile Installation / Removal Method
New Installation	1	Berth 1 Mooring Hook Dolphin	13	Impact
	2	Berth 1 Outer Breasting Dolphin	17	Impact
	3	Berth 1 Inner Breasting Point	8	Impact
	4	Berth 1 Gangway	4	Impact
	5	Berth 1 Walkways	0	-
	6	Berth 2 South Outside Fender	10	Impact
	7	Berth 2 South Inside Fender	10	Impact
	8	Berth 2 North Inside Fender	9	Impact
	9	Berth 2 North Outside Fender	10	Impact
	10	Berth 2 Main Hose Crane	4	Impact
	11	Berth 2 Aux Crane	4	Impact
	12	Berth 2 Vapor Recovery Hose Crane	0	-
	13	Berth 2 Gangway	4	Impact
	14	Berth 3 Gangway	4	Impact
	15	Berth 4 South Breasting Dolphin	22	Impact
	16	Berth 4 North Breasting Dolphin	22	Impact
	17	Berth 4 Walkways	0	-
		Total 24-inch Square Concrete Piles	**141**	
	18	Berth 4 Loading Platform Retrofit (60-inch-diameter Steel Piles)	8	Impact
	19	Berth 4 Barrier Piles (4 Clusters of 13 Composite Piles)	52	Vibrate
		Total Additional Fill	**201**	
Permanent Removal	20	Berth 1 Pile Removal	-2	Vibrate
	21	Berth 2 Pile Removal (106 Wooden - Actual Count)	-106	Vibrate
	22	Berth 2 Whaler Removal (excluding wooden Piles)	-	-
	23	Berth 2 Brace Piles (22-inch Square Concrete Jacketed Timber Piles)	-3	Cut
	24	Berth 4 Concrete Pile Removal	-2	Cut
	25	Berth 1 Existing Walkway	-	-
		Total Removal	**-113**	
		Net Change	**88**	**-**
Temporary Fill	26	Berth 1 Pile Removal	36	Vibrate
	27	Berth 2 Pile Removal (106 Wooden - Actual Count)	-	-
	28	Berth 2 Whaler Removal (excluding wooden Piles)	12	Vibrate

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Completion of the modifications will require cutting holes in the concrete decking of the Wharf to allow piles to be driven. The removal of structures and portion of concrete decking may involve the use of jackhammers to break up concrete, torches to cut metal, and various cutting and grinding power tools. This work will occur at various times throughout the construction schedule. When there is potential for construction debris to fall into the water below the Wharf, temporary work platforms will be used to capture debris. A typical debris catchment system that has been previously used at the Wharf consists of a platform suspended beneath the deck or in some cases a smaller platform immediately below the work area, and a second larger platform beneath that. Debris that falls on the platform is collected and disposed of in an appropriate manner.

Planned modifications at Berth 1 include replacing a gangway to accommodate barges and add a new raised fire monitor; constructing a new 24foot (ft) x 20ft mooring dolphin and hook to accommodate barges and; constructing a new 24ft x 25ft breasting dolphin and 13ft x 26ft breasting point with standoff fenders to accommodate barges. The new breasting dolphin will require removal of an existing catwalk and two piles and replacing with a new catwalk at a slightly different location, and adding a short catwalk to provide access to the breasting dolphin. A portion of the existing gangway will be removed. The remaining portion is used for other existing services located on its structure. Much of this work will be above the water or on the Wharf deck. The mooring dolphin and hook, breasting dolphin, and new gangway will require installation of 42 new 24-inch square concrete piles using impact driving methods.

Planned modifications at Berth 2 include installing a new gangway to replace portable gangway and add a new elevated fire monitor; replacing one bollard with a new hook; installing four new standoff fenders (to replace timber fender pile system); replacing existing auxiliary and hose cranes and vapor recovery crane to accommodate the new standoff fenders, and; removing the

existing timber fender pile system along the length of the Berth (~650ft).

Three (3) existing brace piles (22-inch square concrete jacketed timber piles) would be removed by cutting below the mud line if possible. These modifications will require the installation of 51 new 24-inch square concrete piles, using impact driving methods, to support the gangway, standoff fenders, hose crane, and auxiliary crane. To keep Berth 2 operational during construction, four temporary ''Yokohama'' fenders will be installed, supported by 36 temporary 14-inch H-piles driven using vibratory methods. It is expected that the H-piles would largely sink under their own weight and would require very little driving. The H-piles and temporary fenders will be removed once the permanent standoff fenders are complete. The auxiliary and hose cranes are being replaced with cranes with longer reach to accommodate the additional distance of the new standoff fenders. The new vapor recovery crane would be mounted on an existing pedestal and not require in-water work.

Planned modifications at Berth 3 include installing new fixed gangway to replace portable gangway and add a new raised fire monitor. The gangway would be supported by four, 24-inch square concrete piles. This would be the only in-water work for modifications at Berth 3.

Planned modifications at Berth 4 include installing two new 36ft x 20ft dolphins with standoff fenders (two per dolphin) and two catwalks as well as seismically retrofitting the Berth 4 loading platform including bolstering and relocation of piping and electrical facilities. The new fenders would add 44 new 24-inch square concrete piles. The seismic retrofit would structurally stiffen the Berth 4 Loading Platform under seismic loads. This will require cutting holes in the concrete decking and driving eight, 60-inch diameter hollow steel batter (angled) piles, using impact pile driving. To accommodate the new retrofit, an existing sump will be replaced with a new sump and two, 24-inch square concrete piles will be removed or cut to the mudline. To drive the 60-inch batter piles, eight temporary steel piles, 36 inches in diameter, will be needed to support templates for the batter piles during driving. Two templates are required, each 24ft by 4ft and supported by up to four 36-inch steel pipe piles. The templates will be above water.

The proposed project would also add 4 clusters of 13 composite piles each (52 total composite piles) as markers and protection of the new batter piles on the east side of the retrofit.

Note that the proposed IHA will only cover pile driving and removal that will occur during the 2018 work season, as provided in Table 2.

TABLE 2—PILE DRIVING SUMMARY FOR 2018 WORK SEASON

Pile type	Pile driver type	Number of piles	Number of driving days
36-inch steel template pile	Vibratory	8	2
Concrete pile removal	Vibratory	5	1
24-inch concrete	Impact	8	8
14-inch H pile installation (for temporary fenders)	Vibratory/Impact *	36	12
Timber pile removal	Vibratory	53	5

* A vibratory driver will be preferentially used for installation of the temporary H piles. In the event that the pile hits a buried obstruction and can no longer be advanced with a vibratory driver, and impact hammer may be used.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website

Table 3 lists all species with expected potential for occurrence in the Bay near the project area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal Stock Assessments: 2016 (Carretta *et al.,* 2017). All values presented in Table 3 are the most recent available at the time of publication and are available at *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/-; (N)	20,990 (0.05, 20,125, 2011).	624	132
Family Balaenidae						
Humpback whale	*Megaptera novaeangliae*	California//stock	E/D; (Y)	1,918 (0.03, 1,876, 2014)	11.0	≥6.5
Family Delphinidae						
Bottlenose dolphin	*Tursiops truncatus*	California Coastal	-/-; (N)	453 (0.06, 346, 2011)	2.7	≥2.0
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena Phocoena*	San Francisco-Russian River Stock.	-/-; (N)	9,886 (0.51, 6,625, 2011)	66	0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	Eastern U.S. stock	-/-; (N)	296,750 (-, 153,337, 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S. stock	-/-; (N)	41,638 (-, 41,638, 2015)	2,498	108
Northern fur seal	*Callorhinus ursinus*	California stock	-/-; (N)	14,050 (-, 7,524, 2013)	451	1.8
Family Phocidae (earless seals)						
Pacific harbor seal	*Phoca vitulina*	California stock	-/-; (N)	30,968 (-, 27,348, 2012)	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California Breeding stock	-/-; (N)	179,000 (-, 81,368, 2010)	4,882	8.8

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

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. 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.

Note: *Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the proposed survey areas are included in Table 3. However, the temporal and/or spatial occurrence of humpback whales and Steller sea lions is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Although 35 species of marine mammals can be found off the coast of California, few species venture into San Francisco Bay, and only Pacific harbor seals, California sea lions, and harbor porpoises, make the Bay a permanent home. Small numbers of gray whales are regularly sighted in the Bay during their yearly migration, though most sightings tend to occur in the Central Bay near the Golden Gate Bridge. Bottlenose dolphins may also occasionally occur within San Francisco Bay.

Humpback whales are rare, though well-publicized, visitors to the interior of San Francisco Bay. A humpback whale journeyed through the Bay and up the Sacramento River in 1985 and re-entered the Bay in the fall of 1990, stranding on mudflats near Candlestick Park (Fimrite 2005). In May 2007, a humpback whale mother and calf spent just over two weeks in San Francisco Bay and the Sacramento River before finding their way back out to sea. Although it is possible that a humpback whale will enter the Bay and find its way into the project area during construction activities, their occurrence is unlikely. Similarly, the Steller sea lions are rare visitors to San Francisco Bay and is not expected to occur in the project area during construction. As a result, this species is not considered further.

Pacific Harbor Seal

The Pacific harbor seal is one of five subspecies of *Phoca vitulina,* or the common harbor seal. They are a true seal, with a rounded head and visible ear canal, distinct from the eared seals, or sea lions, which have a pointed head and an external ear. Although generally solitary in the water, harbor seals come ashore at ''haulouts''—shoreline areas where pinnipeds congregate to rest, socialize, breed, and molt—that are used for resting, thermoregulation, birthing, and nursing pups. Haul-out sites are relatively consistent from year to year (Kopec and Harvey 1995), and females have been recorded returning to their own natal haulout when breeding (Green *et al.,* 2006). The nearest haulout site to the project site is Castro Rocks, approximately 650 meters (m) north of the northernmost point on the Long Wharf.

The haulout sites at Mowry Slough (~55 kilometers (km) distant from project site), in the South Bay, Corte Madera Marsh (~8 km distant) and Castro Rocks (~650 m distant), in the northern portion of the Central Bay, and Yerba Buena Island (~12 km distant) in the Central Bay, support the largest concentrations of harbor seals within the San Francisco Bay. The California Department of Transportation (Caltrans) conducted marine mammal surveys before and during seismic retrofit work

on the RSRB in northern San Francisco Bay. The RSRB is located north of the project site, The surveys included extensive monitoring of marine mammals at points throughout the Bay. Although the study focused on harbor seals hauled out at Castro Rocks and Red Rock Island near the RSRB, all other observed marine mammals were recorded. Monitoring took place from May 1998 to February 2002 (Green *et al.,* 2002) and determined that at least 500 harbor seals populate San Francisco Bay. This estimate agrees with previous seal counts in San Francisco Bay, which ranged from 524 to 641 seals from 1987 to 1999 (Goals Project 2000).

Although births of harbor seals have not been observed at Corte Madera Marsh and Yerba Buena Island, a few pups have been seen at these sites. The main pupping areas in the San Francisco Bay are at Mowry Slough and Castro Rocks (Caltrans 2012). Seals haul out year-round on Castro Rocks during medium to low tides; few low tide sites are available within San Francisco Bay. The seals at Castro Rocks are habituated, to a degree, to some sources of human disturbance such as large tanker traffic and the noise from vehicle traffic on the bridge, but often flush into the water when small boats maneuver close by or when people work on the bridge (Kopec and Harvey 1995). Long-term monitoring studies have been conducted at the largest harbor seal colonies in Point Reyes National Seashore (~45 km west of the project site on Pacific coast) and Golden Gate National Recreation Area (~15 km southwest of the project site) since 1976. Castro Rocks and other haul-outs in San Francisco Bay are part of the regional survey area for this study and have been included in annual survey efforts. Between 2007 and 2012, the average number of adults observed at Castro Rocks ranged from 126 to 166 during the breeding season (March through May) and from 92 to 129 during the molting season (June through July) (Truchinski *et al.,* 2008, Flynn *et al.,* 2009, Codde *et al.,* 2010, Codde *et al.,* 2011, Codde *et al.* 2012, Codde and Allen 2013).

California Sea Lion

The California sea lion belongs to the family Otariidae or ''eared seals,'' referring to the external ear flaps not shared by other pinniped families. While California sea lions forage and conduct many activities within the water, they also use haulouts. California sea lions breed in Southern California and along the Channel Islands during the spring.

In the Bay, sea lions haul out primarily on floating docks at Pier 39 in the Fisherman's Wharf area of the San Francisco Marina, approximately 12.5 km southwest of the project site. The California sea lions usually arrive at Pier 39 in August after returning from the Channel Islands (Caltrans 2013). In addition to the Pier 39 haulout, California sea lions haulout on buoys and similar structures throughout the Bay. They are seen swimming off mainly the San Francisco and Marin County shorelines within the Bay but may occasionally enter the project area to forage. Over the monitoring period for the RSRB, monitors sighted California sea lions on 90 occasions in the northern portion of the Central Bay and at least 57 times in the Central Bay. No pupping activity has been observed at this site or at other locations within the San Francisco Bay (Caltrans 2012).

Although there is little information regarding the foraging behavior of the California sea lion in the San Francisco Bay, they have been observed foraging on a regular basis in the shipping channel south of Yerba Buena Island. Because California sea lions forage over a wide range in San Francisco Bay, it is possible that a limited number of individuals would be incidentally harassed during construction.

Harbor Porpoise

The harbor porpoise is a member of the Phocoenidae family. They generally occur in groups of two to five individuals, and are considered to be shy, relatively nonsocial animals.

In prior years, harbor porpoises were observed primarily outside of San Francisco Bay. The few harbor porpoises that entered did not venture far into the Bay. No harbor porpoises were observed during marine mammal monitoring conducted before and during seismic retrofit work on the RSRB. In recent years, there have been increasingly common observations of harbor porpoises within San Francisco Bay. According to observations by the Golden Gate Cetacean Research team, as part of their multi-year assessment, approximately 650 harbor porpoises have been observed in the San Francisco Bay, and up to 100 may occur on a single day (Golden Gate Cetacean Research 2017). In San Francisco Bay, harbor porpoises are concentrated in the vicinity of the Golden Gate Bridge (approximately 12 km southwest of the project site) and Angel Island (5.5 km southwest), with lesser numbers sighted in the vicinity of Alcatraz (11 km south) and west of Treasure Island (10 km southeast) (Keener 2011). Because this species may venture into the Bay east of Angel Island, there is a slight chance that a small number of individuals could occur in the vicinity of the proposed project.

Gray Whale

Gray whales are large baleen whales. They are one of the most frequently seen whales along the California coast, easily recognized by their mottled gray color and lack of dorsal fin. They feed in northern waters primarily off the Bering, Chukchi, and western Beaufort seas during the summer, before heading south to the breeding and calving grounds off Mexico over the winter. Between December and January, late-stage pregnant females, adult males, and immature females and males will migrate southward. The northward migration peaks between February and March. During this time, recently pregnant females, adult males, immature females, and females with calves move north to the feeding grounds (NOAA 2003). A few individuals will enter into the San Francisco Bay during their northward migration.

RSRB project monitors recorded 12 living and 2 dead gray whales, all in either the Central Bay or San Pablo Bay, and all but 2 sightings occurred during the months of April and May (Winning 2008). One gray whale was sighted in June and one in October (the specific years were unreported). The Oceanic Society has tracked gray whale sightings since they began returning to the Bay regularly in the late 1990s. The Oceanic Society data show that all age classes of gray whales are entering the Bay and that they enter as singles or in groups of up to five individuals. However, the data do not distinguish between sightings of gray whales and number of individual whales (Winning 2008). It is possible that a small number of gray whales enter the Bay in any given year, typically from March to May. However, this is outside of the June to November window when pile driving would occur.

Bottlenose Dolphin

The range of the bottlenose dolphin has expanded northward along the Pacific Coast since the 1982–1983 El Niño (Carretta *et al.,* 2013; Wells and Baldridge 1990). They have been observed along the coast in Half Moon Bay, San Mateo, Ocean Beach in San Francisco, and Rodeo Beach in Marin County. Observations indicate that bottlenose dolphin occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge (Golden Gate Cetacean Research 2014). While individuals of this species occasionally enter San Francisco Bay, observations indicate that they generally remain in

proximity to the Golden Gate near the mouth of the Bay. However, a limited number may approach the project area during in-water construction.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibels (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz).
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 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.
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 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 (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Seven marine mammal species (three cetacean and four pinniped (two otariid and two phocid) species) have the reasonable potential to co-occur with the proposed activities. Please refer to Table 3. Of the cetacean species that may be present, one is classified as low-frequency cetaceans (*i.e.,* gray whale), one is classified as mid-frequency cetaceans (*i.e.,* bottlenose dolphin), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 micro pascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter (m^2). The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

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 1983). 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 (Hastings and Popper 2005). 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 than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,*1995), and the

sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and vibratory pile extraction. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following paragraphs). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002).

Acoustic Impacts

Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. In this section, we first describe specific manifestations of acoustic effects before providing discussion specific to the proposed construction activities in the next section.

Permanent Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,*

2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least six dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007).

Temporary threshold shift—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends.

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. 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.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)); and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion 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; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). 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. 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 Southall *et al.* (2007), Finneran and Jenkins (2012), and Finneran (2015).

Behavioral effects—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 showed 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, 2003). 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).

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.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most

economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine 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, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the 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 serious fitness consequences. 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 functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). 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. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Non-auditory physiological effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source, where SLs are much higher, 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) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. However, the proposed activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects. Therefore, non-auditory physiological

impacts to marine mammals are considered unlikely.

Disturbance Reactions—Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. Specific behavioral changes that may result from this proposed project include changing durations of surfacing and dives, moving direction and/or speed; 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); and avoidance of areas where sound sources are located. If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, potential impacts on the stock or species could potentially be significant if growth, survival and reproduction are affected (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Note that the significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor.

Airborne Acoustic Effects from the Proposed Activities—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. However, these animals would previously have been ''taken'' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple instances of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction.

Potential Pile Driving Effects on Prey—Construction activities would produce continuous (*i.e.,* vibratory pile driving) sounds and pulsed (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance within an undetermined portion of the affected area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species from the proposed project are expected to be minor and temporary due to the relatively short and intermittent timeframe (up to 28 driving days over 6 months) of pile driving and extraction.

Effects to Foraging Habitat—Pile installation may temporarily impact foraging habitat by increasing turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. The contractor must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25ft radius around the pile (Everitt *et al.,* 1980). Furthermore, water quality impacts are expected to be negligible because the project area occurs in a high energy, dynamic area with strong tidal currents. Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds in the area could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

It is important to note that pile driving and removal activities at the project site will not obstruct movements or migration of marine mammals.

In summary, given the relatively short (28 days) and intermittent nature of sound associated with individual pile driving and extraction events and the relatively small area that would be affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species and a single phocid species due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for low-frequency, mid-frequency species, or pinniped groups, with the exception of harbor seals. The proposed mitigation and monitoring measures are expected to minimize the

severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that pinnipeds exposed above received levels of 100 dB re 20 µPa (rms) will be behaviorally harassed.

Chevron's proposed activity includes the use of continuous (vibratory driving) and impulsive (impact driving) sources, and therefore the 120 and160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Applicant's proposed activity includes the use of impulsive (impact driving) and non-impulsive (vibratory driving) sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

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

Note: Peak sound pressure (L_{pk} has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving will generate underwater noise that potentially could result in disturbance to marine mammals swimming by the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source until the source becomes indistinguishable from ambient sound. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. A standard sound propagation model, the Practical Spreading Loss model, was used to estimate the range from pile driving activity to various expected SPLs at potential project structures. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.,* driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance. The TL equation is:

$$TL = 15\log10(R_1/R_2)$$

Where:

TL is the transmission loss in dB,

R_1 is the distance of the modeled SPL from the driven pile, and
R_2 is the distance from the driven pile of the initial measurement.

The degree to which underwater noise propagates away from a noise source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including the sea surface and sediment type. The TL model described above was used to calculate the expected noise propagation from both impact and vibratory pile driving, using representative source levels to estimate the zone of influence (ZOI) or area exceeding specified noise criteria.

Source Levels

Sound source levels from the Chevron site were not available. Therefore, literature values published for projects similar to the Chevron project were used to estimate source levels that could potentially be produced. Results are shown in Table 5.

Modifications at the four berths require the placement of new 24-inch diameter square concrete piles. Approximately one to two of these piles would be installed in one workday, using impact driving methods. Based on measured blow counts for 24-inch concrete piles driven at the Long Wharf Berth 4 in 2011, installation for each pile could require up to approximately 300 blows and 1.5 second per blow average over a duration of approximately 20 minutes per pile, with 40 minutes of pile driving time per day if two piles are installed. To estimate the noise effects of the 24-inch square concrete piles, the general values provided by Caltrans (2015a) are shown in Table 5.

To estimate the noise effects of impact driving of 14-inch steel H piles, the values provided by Caltrans were also utilized. These source values are 208 dB peak, 187 RMS, and 177 dB SEL(single strike). Based on these levels, impact driving of the 14-inch steel H piles is expected to produce underwater sound exceeded the Level B 160 dB RMS threshold over a distance of 631 meters.

During construction, temporary fendering would be installed at Berth 2 which will be supported by thirty-six steel 14-inch steel H piles. It is estimated that each pile could be driven in five (5) minutes. Two (2) to four (4) piles would be installed in any single workday for a total of approximately 12 days of installation. For the purposes of calculating the distance to Level A thresholds, four piles per day is assumed. The piles would be removed after the permanent fenders are in place. A vibratory hammer would be used to vibrate the piles to facilitate pulling them from the mud. The best match for estimated source levels is the Port of Anchorage pile driving test project. During vibratory pile driving associated with the Anchorage project, peak noise levels ranged from 165 to 175 dB, and the RMS ranged between 152 and 168 dB, both measured at approximately 15 meters (50 ft) (Caltrans 2015a).

The source levels for vibratory installation of 36-inch temporary steel piles were from the Explosive Handling Wharf-2 (EHW–2) project located at the Naval Base Kitsap in Bangor, Washington as stated in Caltrans (2015a). During vibratory pile driving measured peak noise levels were approximately 180 dB, and the RMS was approximately 169 dB at a 10 meter (33ft) distance. These temporary piles would require a drive time per pile of approximately 10 minutes. Up to four (4) of these piles could be installed in any single workday for a total of 40 minutes.

The most applicable source values for wooden pile removal were derived from measurements taken at the Port Townsend dolphin pile removal in Washington. During vibratory pile extraction associated with this project, which occurred under similar circumstances, measured peak noise levels were approximately 164 dB, and the RMS was approximately 150 dB (WSDOT 2011). Applicable sound values for the removal of concrete piles could not be located, but they are expected to be similar to the levels produced by wooden piles described above, as they are similarly sized, non-metallic, and will be removed using the same methods.

During construction, 106 16-inch timber piles, and seven 18 to 24-inch square concrete piles would be removed. Up to twelve of these piles could be extracted in one workday. Extraction time needed for each pile may vary greatly, but could require approximately 400 seconds (approximately 7 minutes).

TABLE 5—THE SOUND LEVELS (dB PEAK, dB RMS, AND dB SSEL) EXPECTED TO BE GENERATED BY EACH HAMMER AND PILE TYPE

Type of pile	Hammer type	Estimated pressure level (dB Peak)	Estimated pressure Level (dB RMS)	Estimated single strike sound exposure level (dB sSEL)
24-inch sq. concrete	Impact	188	176	166
14-inch Temporary steel H-pile	Impact	208	187	177
14-inch Temporary steel H-pile	Vibratory	180	*168	.....
36-inch Steel Pipe	Vibratory	180	169	.....
Wood and concrete pile extraction	Vibratory	164	150	.....

*Measured at 15 m.

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not

incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

Table 6 shows the inputs that were used in the User Spreadsheet to determine cumulative PTS Thresholds. Table 7 shows the Level A Isopleths as determined utilizing inputs from Table 6. Level B isopleths for impact and vibratory driving and extraction are shown in Table 8.

TABLE 6—INPUTS FOR USER SPREADSHEET

Spreadsheet tab used	E.1: Impact pile driving (stationary source: impulsive, intermittent)	E.1: Impact pile driving (stationary source: impulsive, intermittent)	A: Stationary source: non-impulsive, continuous	A: Stationary source: non-impulsive, continuous	A: Stationary source: non-impulsive, continuous
Pile Type and Hammer Type	24-inch sq. concrete piles.	14-inch Steel H pile.	14-inch Steel H pile.	36-in steel	Wood concrete pile extraction.
Source Level	166 (Single strike/shot SEL).	177 (Single strike/shot SEL).	168 RMS	169 RMS	150 RMS.
Weighting Factor Adjustment (kHz)	2	2	2.5	2.5	2.5.
Number of strikes in 1-h OR number of strikes per pile.	300	200	NA	NA	NA.
Activity Duration (h) within 24-h period OR number of piles per day.	2 piles	4 piles	0.333	0.6667	1.333.
Propagation (xLogR)	15	15	15	15	15.
Distance of source level measurement (meters);.	10	10	15	10	10.

TABLE 7—RADIAL DISTANCES TO LEVEL A ISOPLETH DURING IMPACT AND VIBRATORY DRIVING

Project element requiring pile installation	Distance in meters (feet)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Impact Driving:					
24 inch square concrete (1–2 per day)	52 (171)	2 (6)	62 (204)	28 (92)	2 (7)
14-inch steel H pile (4 per day)	343 (1,124)	12 (40)	408 (1,339)	183 (602)	13 (44)
Vibratory Driving/Extraction:					
14-inch steel H pile (4 per day)	14 (46)	1 (3)	21 (69)	9 (30)	1 (3)
36-inch steel pipe pile (4 per day)	18 (58)	2 (5)	26 (86)	11 (35)	1 (2)
Wood and concrete pile extraction (12 per day)	2 (5)	0 (0)	2 (7)	1 (3)	0 (0)

TABLE 8—RADIAL DISTANCES TO LEVEL B ISOPLETHS DURING IMPACT AND VIBRATORY DRIVING

Pile type	Distance to threshold in meters (feet)
Impact Driving (160 dB threshold):	
24-inch square concrete	117 (382)
14-inch steel H pile	631 (2,070)
Vibratory Driving/Extraction (120 dB threshold):	
14-inch steel H pile	23,773 (77,995)
36-inch steel pipe pile	18,478 (60,609)
Wood and concrete pile extraction	1,000 (3,280)

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

San Francisco Bay has five known harbor seal haul out sites that include Alcatraz Island, Castro Rocks, Yerba Buena Island, Newark Slough, and Mowry Slough. Yerba Buena Island, Alcatraz and Castro Rocks are within or near the areas within ensonified Level B zones. Castro Rocks is the largest harbor seal haul out site in the northern part of San Francisco Bay and is the second largest pupping site in the Bay (Green *et al.* 2002). The pupping season is from March to June in San Francisco Bay. During the molting season (typically June–July and coincides with the period when piles will be driven) as many as approximately 130 harbor seals on average have been observed using Castro Rocks as a haul out. Harbor seals are more likely to be hauled out in the late afternoon and evening, and are more likely to be in the water during the morning and early afternoon (Green *et al.* 2002). However, during the molting season, harbor seals spend more time hauled out and tend to enter the water later in the evening. During molting, harbor seals can stay onshore resting for an average of 12 hours per day during the molt compared to around 7 hours per day outside of the pupping/molting seasons (NPS 2014). Tidal stage is a major controlling factor of haul out usage at Castro Rocks with more seals present during low tides than high tide periods (Green *et al.* 2002). Additionally, the number of seals

hauled out at Castro Rocks also varies with the time of day, with proportionally more animals hauled out during the nighttime hours (Green *et al.* 2002). Therefore, the number of harbor seals in the water around Castro Rocks will vary throughout the work period. The number of harbor seals located at Castro Rocks is based on the highest mean plus the standard error of harbor seals observed at Castro Rocks during recent annual surveys conducted by the National Park Service (NPS) (Codde, S. and S. Allen 2013, 2015, and 2017), resulting in a value of 176 seals. The same NPS survey determined that harbor seal population in the Central Bay at Alcatraz and Yerba Buena Island is approximately 167 seals (Codde, S. and S. Allen 2013, 2015, and 2017).

California sea lions haul out primarily on floating docks at Pier 39 in the Fisherman's Wharf area of the San Francisco Marina, approximately 12.5 km (7.8 miles) southwest of the project area. Based on counts done in 1997 and 1998, the number of California sea lions that haul out at Pier 39 fluctuates with the highest occurrences in August and the lowest in June. In addition to the Pier 39 haulout, California sea lions haul out on buoys and similar structures throughout the Bay. They are seen swimming off mainly the San Francisco and Marin shorelines within the Bay but may occasionally enter the project area to forage. Over the monitoring period for the RSRB, monitors sighted at least 90 California sea lions in the North Bay and at least 57 in the Central Bay (Caltrans 2012). During monitoring for the San Francisco-Oakland Bay Bridge (SFOBB) Project in the central Bay, 69 California sea lions were observed in the vicinity of the bridge over a 17-year period from 2000–2017 (Caltrans 2018), and from these observations, an estimated density of 0.161 animals per square kilometer (km^2) is derived (NMFS 2018).

A small but growing population of harbor porpoises utilizes San Francisco Bay. Harbor porpoises are typically spotted in the vicinity of Angel Island and the Golden Gate (6 and 12 km southwest respectively) with lesser numbers sighted in the vicinity of Alcatraz and around Treasure Island (Keener 2011). Porpoises but may utilize other areas in the Central Bay in low numbers, including the proposed project area. However, harbor porpoise are naturally inclined to remain near the shoreline areas and downstream of large landmasses as they are constantly foraging. For this reason, the project area would present a less than likely area to observe harbor porpoise as they would either need to traverse the perimeter of the Bay to arrive there, or would have to swim through the open Bay. Both scenarios are possible, but would represent uncmmon behavior. Based on monitoring conducted for the SFOBB project, between 2000–2017 an in-water density of 0.031 animals per km^2 estimated by Caltrans for this species. However, porpoise occurrence increased significantly in 2017 resulting in a 2017 only density of 0.167 animals per km^2 (Caltrans 2018).

Small numbers of northern elephant seals haul out or strand on coastline within the Central Bay. Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for northern elephant seal of 0.06 animal per km^2 (Caltrans, 2015b). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project. As a result, densities during pile driving for the proposed action would be much lower.

The incidence of northern fur seal in San Francisco Bay depends largely on oceanic conditions, with animals more likely to strand during El Niño events. The likelihood of El Niño conditions occurring in 2018 is currently low, with La Niña or neutral conditions expected to develop (NOAA, 2018).

The range of the bottlenose dolphin has expanded northward along the Pacific Coast since the 1982–1983 El Niño (Carretta *et al.* 2013, Wells and Baldridge 1990). They now occur as far north as the San Francisco Bay region and have been observed along the coast in Half Moon Bay, San Mateo, Ocean Beach in San Francisco, and Rodeo Beach in Marin County. Observations indicate that bottlenose dolphin occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge (Golden Gate Cetacean Research 2014). Transient individuals of this species occasionally enter San Francisco Bay, but observations indicate that they usually remain in proximity to the Golden Gate near the mouth of the Bay. Beginning in 2015, two individuals have been observed frequently in the vicinity of Oyster Point, located south of San Francisco (GGCR, 2016; GGCR 2017; Perlman, 2017). Bottlenose dolphins are being observed in San Francisco Bay more frequently in recent years. Groups with an average size of five animals have been observed entering the Bay in the vicinity of Yerba Buena Island at a rate of once per week. They usually are observed over two week spans and then depart for an extended period of time. (NMFS, 2017b).

Gray whales occasionally enter the Bay during their northward migration period, and are most often sighted in the Bay between February and May. Most venture only about 2 to 3 km (about 1–2 miles) past the Golden Gate, but gray whales have occasionally been sighted as far north as San Pablo Bay. Pile driving is not expected to occur during this time, and gray whales are not likely to be present at other times of year.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

Limited density data is available for marine mammal species in San Francisco Bay. Estimates here are determined using data taken during marine mammal monitoring associated with RSRB retrofit project, the San Francisco-Oakland Bay Bridge replacement project, and other marine mammal observations for San Francisco Bay. For Pacific harbor seal, data was also derived from recent annual surveys of haul outs in the Bay conducted by the National Park Service (Codde, S. and S. Allen. 2013, 2015, and 2017).

Pacific Harbor Seal

As noted above, take estimates are based on the highest mean plus the standard error of harbor seals observed by NPS at Castro Rocks which equals 176 animals. (Codde, S. and S. Allen. 2013, 2015, and 2017) Since pile driving would occur intermittently during the day, varying sets of animals may be hauled out or in the water. For simplicity, this analysis assumes that since harbor seals haul out for around 7 hours when not pupping/molting, 7/24 or 29 percent of the harbor seals would not be in the water during pile driving and would not be exposed. Thus, it is estimated that 71 percent of the 176 individuals (125 individuals) will be in the water at some point during each work day, and potentially exposed to underwater noise from pile driving. Of these 125 seals, the proportion that may enter the areas over which the Level B harassment

thresholds may be exceeded are estimated as follows:

• *Impact driving of 24-inch concrete piles at all Berths:* It is assumed that 10 percent of the animals that enter the water from Castro Rocks will enter the small Level B zones associated with this pile type as shown in Figure 6–1 in the application. Thus, it is estimated that up to 12.5 individuals per day could be exposed (125/10 = 12.5) by entering the Level B harassment zone to the south of Castro Rocks.

• *Impact driving of 14-inch steel H piles:* Impact driving would only occur in the event that a pile encounters an obstruction such as an old timber pile beneath the mud line. These piles will be preferentially driven with a vibratory driver, which would have a larger Level B zone but a smaller Level A zone than installation with an impact driver. Thus, Level B take for this activity is based on installation using vibratory driver, while Level A take is based on installation using impact driving. For the purposes of calculating Level A take, as a proportion of Level B take, it is assumed that approximately 25 percent of the 125 harbor seals using Castro Rocks could approach and be subject to Level B harassment due to the size and location of the Level B isopleth (Figure 6–2 in application). Therefore, it is assumed that up to 31.25 individuals per day could be exposed when this activity is being conducted.

• *Vibratory driving and removal of the 36-inch steel pipe piles at Berth 4:* Isopleths for this vibratory driving encompass Castro Rocks, therefore it is assumed that all of the estimated 125 animals in the water, could be exposed when these piles are being driven at Berth 4.

• *Vibratory driving/extraction of the 14-inch H piles at Berth 2:* Isopleths for this vibratory driving encompass Castro Rocks, therefore is assumed that all of the 125 animals in the water could be exposed when this activity is being conducted at Berth 2.

• *Vibratory removal of timber and concrete piles at Berths 1, 2 and 4:* Due to the small size of the Level B zone for this activity, fewer harbor seals are expected to be exposed to Level B harassment. It is assumed that approximately 25 percent of the 125 harbor seals using Castro Rocks could approach and be subject to Level B harassment. Therefore, it is assumed that up to 31.25 individuals per day could be exposed when this activity is being conducted.

In order to account for other individuals that may be foraging in the more distant part of the Level B harassment zone, additional take of harbor seal has been estimated based on other harbor seal populations in the Central Bay. Using the same data set (Codde, S. and S. Allen. 2013, 2015, and 2017) that was used for Castro Rocks, a population for the Central Bay of 167 harbor seals was established based on other Central Bay haulouts at Alcatraz and Yerba Buena Island. The area of the Central Bay (bound by the Golden Gate, Richmond Bridge, SFOBB, and adjoining coastline) is approximately 134 km^2, resulting in a harbor seal density of 1.25 animals per km^2. The population that hauls out at Castro Rocks is not included in this density estimate because of the proximity of the haul site to the project and potential take of those harbor seals has been estimated separately using the methods described above. The estimated take based on the Central Bay density is added to the take estimated for the Castro Rocks population, as provided in Table 9 below. Also provided in Table 9 is the estimated Level A take for impact driving of the steel 14-inch H piles, which has been estimated by taking Level B take and multiplying it by the ratio of the Level A zone area to the Level B zone area as requested by NMFS. Level A take is not requested for vibratory driving.

TABLE 9—DAILY LEVEL A AND LEVEL B HARASSMENT ESTIMATE FOR PACIFIC HARBOR SEAL

Pile type	Estimated Level B take per day					Estimated Level A take per day—total
	Level B zone (km^2)	Level A zone, minus exclusion zone (km^2)	Central bay [1] (1.25 per km^2)	Project vicinity [1]	Harbor seal—total	
Vibratory Driving:						
14-inch steel H pile	192.31	NA	239.55	125	364.55	NA
36-inch steel pile	176.44	NA	219.76	125	344.76	NA
Timber/Concrete Pile Removal	3.69	NA	4.59	31.25	35.84	NA
Impact Driving:						
14-inch steel H pile	1.36	0.10	*1.69	*31.25	*32.88	2.47
24-inch concrete pile	0.04	0	0.05	12.5	12.55	0

[1] Based on 71 percent of 176 individuals that haul out at Castro Rocks, approximately 1,000 m from project site.
* Only displayed to provide the calculation of Level A take. Level B take authorized for vibratory driving would cover any level B take from occasional impact driving.

For impact pile driving of the 14-inch steel H piles, the PTS Zone is large enough to warrant a smaller exclusion zone and the authorization of some Level A harassment for harbor seal so that pile driving can be completed on schedule. A 35 meter shutdown zone (smaller than the Level A Zone) for this species would be established, but individuals that place themselves in the Level A zone but outside of the shut-down zone may experience Level A harassment, if they reside in that area for a long enough duration.

California Sea Lion

The estimated California seal lion density of 0.16 animals per km^2 previously described was used to calculate potential Level B exposures as shown in Table 10.

TABLE 10—DAILY LEVEL B HARASSMENT EXPOSURE ESTIMATE FOR CALIFORNIA SEA LION

Pile type	Level B zone (km^2)	Level B Take estimate (based on Central Bay density of 0.16 animals per km^2)
Vibratory Driving:		
14-inch steel H pile	192.31	17.30
36-inch steel pile	176.44	15.88
Timber/Concrete Pile Removal	3.69	0.33
Impact Driving:		
14-inch steel H pile	NA	NA
24-inch concrete pile	0.17	0.02

Harbor Porpoise

Based on monitoring conducted for the SFOBB project described previously, an in-water density of 0.17 animals per km^2 was estimated by Caltrans for this species (NMFS 2017b). Using this in-water density and the areas of potential harassment, take is estimated for harbor porpoise as provided in Table 11. Also provided in Table 11 is the estimated Level A take for impact driving, which has been estimated by taking Level B take and multiplying it by the ratio of the Level A zone area to the Level B zone area. A single harbor porpoise could be exposed to Level A harassment during impact driving or 14-inch steel H-piles as shown in Table 13. NMFS, however, conservatively proposes to authorize Level A take of two animals.

TABLE 11—DAILY LEVEL A AND LEVEL B HARASSMENT ESTIMATE FOR PACIFIC HARBOR PORPOISE

Pile type	Level B zone (km^2)	Level A zone, minus exclusion zone (km^2)	Level B estimate central bay in-water—0.17 per km^2	Estimated Level A take per day
Vibratory Driving:				
14-inch steel H pile	192.31	.....	32.69	NA
36-inch steel pile	176.44	.....	29.99	NA
Timber/Concrete Pile Removal	3.69	.....	0.63	NA
Impact Driving:				
14-inch steel H pile	1.36	*0.32	*0.23	0.05
24-inch concrete pile	0.04	0	0.04	0

*Only displayed to provide the calculation of Level A take. Level B take authorized for vibratory driving would cover any Level B take from occasional impact driving.

For impact pile driving of the 14-inch H piles, the Level A Zone is large enough to warrant the authorization of some Level A. A 250 meter shutdown zone for this species would be established, but individuals that place themselves in the Level A zone but outside of the shut-down zone may experience Level A harassment, if they reside in that area for a long enough duration.

Northern Elephant Seal

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for produced an estimated density for northern elephant seal of 0.06 animal per km^2 (Caltrans, 2015b). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project. As a result, densities during pile driving for the proposed action would be much lower. It is possible that a lone northern elephant seal may enter the Level B harassment area once per day during pile driving, for a total of 28 takes. Level A harassment of this species is not expected to occur and is not proposed by NMFS.

Northern Fur Seal

As noted previously, the incidence of northern fur seal in San Francisco Bay depends largely on oceanic conditions, with animals more likely to strand during El Niño events. The likelihood of El Niño conditions occurring in 2018 is currently low, with La Niña or neutral conditions expected to develop (NOAA, 2018). Given the low probability that fur seals would enter into the Bay and project area in 2018, Chevron has conservatively requested and NMFS is proposing authorization of 10 fur seals takes by Level B harassment. Level A harassment of this species is not anticipated or authorized by NMFS.

Bottlenose Dolphin

When this species is present in San Francisco Bay, it is more typically found close to the Golden Gate. Recently, beginning in 2015, two individuals have been observed frequently in the vicinity of Oyster Point (GGCR, 2016; GGCR 2017; Perlman, 2017). The average reported group size for bottlenose dolphins is five. Reports show that a group normally comes into San Francisco Bay near Yerba Buena Island once per week for approximately 2-week stints and then leaves the Bay (NMFS, 2017b). Chevron assumed groups of five individuals may enter San Francisco Bay and the ensonified area three times during separate two-week spans. Therefore, groups of 5 animals would potentially be exposed at a rate of once per week over six weeks, resulting in up

to 30 Level B exposures. As such, NMFS proposes to authorize the take by Level B harassment of 30 bottlenose dolphins. Although a small Level A zone for mid-frequency cetaceans is estimated during impact driving, marine mammal monitoring of the shutdown would ensure that take by Level A harassment does not occur.

Gray Whale

Gray whales are the only whale species that travels far into San Francisco Bay with any regularity. They occasionally enter the Bay during their northward migration period, and are most often sighted in the Bay between February and May. Most venture only about 2 to 3 kilometers (about 1–2 miles) past the Golden Gate, but gray whales have occasionally been sighted as far north as San Pablo Bay. Pile driving is not anticipated to occur during the February through May timeframe and gray whales are not likely to be present at other times of year. In the very unlikely event that a gray whale or pair of gray whales makes its way close to the project area while pile driving activities are under way, Chevron has requested take by Level B harassment of up to two (2) gray whales per year. NMFS agrees and proposes the take of 2 gray whales by Level B harassment. No Level A take is proposed.

Tables 12 and 13 summarize the estimate of Level B and Level A harassment, respectively, for each species by pile driving activity for the 2018 construction season. For harbor seals, sea lions, harbor porpoise and elephant seals, the Level B harassment estimates are based on the number of individuals assumed to be exposed per day, the number of days of pile driving expected based on an average installation rate. The Level A harassment estimates are derived from the Level B harassment estimates by taking the Level B harassment and multiplying it by the fractional ratio of the area of the Level A zone to the Level B zone.

TABLE 12—TOTAL ESTIMATED TAKE BY LEVEL B HARASSMENT BY SPECIES AND PILE TYPE

Pile type	Pile driver type	Number of piles	Number of driving days	Species						
				Harbor seal	CA sea lion	Harbor porpoise *	Gray whale *	N. elephant seal	N. fur seal	Bottlenose dolphin
36-inch steel template pile**.	Vibratory	8	2	689.01	56.46	58.93	NA	2	NA	NA
Concrete pile removal	Vibratory	5	1	35.78	0.59	0.62	NA	1	NA	NA
24-inch concrete	Impact	8	8	100.23	0.06	0.06	NA	8	NA	NA
14-inch H pile installation***.	Impact/Vibratory	36	12	4,371.28	369.24	385.39	NA	12	NA	NA
Timber pile removal	Vibratory	53	5	178.89	2.95	3.08	NA	5	NA	NA
Total take by species (2018).				5,375	429	448	2	28	10	30

* Take is not calculated by activity type for these species, only a total is given.
** Only the installation of the template piles will occur in 2018. Take associated with their removal will be requested in a subsequent IHA.
*** These piles will be preferentially driven with a vibratory driver, which would have a larger Level B zone than installation with an impact driver. Thus, Level B take for this species is based on installation using vibratory driver, and not an impact driver.

TABLE 13—PROPOSED TAKE BY LEVEL A HARASSMENT

Pile type	Pile driver type	Number of driving days	Harbor seal	Harbor porpoise
36-inch steel template pile	Vibratory	2	0	0
Concrete pile removal	Vibratory	1	0	0
24-inch concrete	Impact	8	0	0
14-inch H pile installation	Impact/Vibratory	12	29	0.65
Timber pile removal	Vibratory	5	0	0
Total take			29	1

Table 14 provides a summary of proposed authorized Level A and Level B takes as well as the percentage of a stock or population proposed for take.

TABLE 14—PROPOSED AUTHORIZED TAKE AND PERCENTAGE OF STOCK OR POPULATION

Species	Stock	Proposed authorized Level A takes	Proposed authorized Level B takes	Percent population
Harbor seal	California	29	5,375	17.4
California sea lion	Eastern U.S		429	<0.01
Harbor porpoise	San Francisco–Russian River	2	448	4.5
Northern elephant seal	California Breeding		28	<0.01
Gray whale	Eastern North Pacific		2	<0.01
Northern fur seal	California		10	<0.01
Bottlenose Dolphin	California Coastal		30	6.6

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned) and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

The following measures would apply to Chevron's mitigation requirements:

- *Seasonal Restriction*—To minimize impacts to listed fish species, pile-driving activities would occur between June 1 and November 30.
- *Daylight Construction Period*—Work would occur only during daylight hours (7:00 a.m. to 7:00 p.m.) when visual marine mammal monitoring can be conducted.
- *Establishment of Shutdown Zone*—For all pile driving/removal and drilling activities, Chevron will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). A shutdown zone will be established which will include all or a portion of the area where underwater SPLs are expected to reach or exceed the cumulative SEL thresholds for Level A harassment as provided in Table 7. The shutdown isopleths for pinnipeds (harbor seals, California sea lion, Northern elephant seal, northern fur seal) and mid-frequency cetaceans (common dolphins) will be set at 35 meters; for high-frequency cetaceans (harbor porpoises) at 250 meters; and for low-frequency cetaceans (gray whales) at 350 meters.
- *10-Meter Shutdown Zone*—During the in-water operation of heavy machinery (*e.g.,* barge movements), a 10-m shutdown zone for all marine mammals will be implemented. If a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.
- *Establishment of Monitoring Zones for Level A and Level B*—Chevron will establish and monitor Level A harassment zones during impact driving for harbor seal extending to 183 meters and harbor seals and extending to 408 m for harbor porpoises. These are areas beyond the shutdown zone in which animals could be exposed to sound levels that could result in PTS. Chevron will also establish and monitor Level B harassment zones which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and extraction. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The Level B zones are depicted in Table 8. As shown, the largest Level B zone is equal to 192.31 km^2, making it impossible for Protected Species Observers (PSOs) to view the entire harassment area. Due to this, Level B exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.
- *Soft Start*—The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. Chevron shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets.
- *Pile Caps/Cushions*—Chevron will employ the use of pile caps or cushions as sound attenuation devices to reduce impacts from sound exposure during impact pile driving.
- *Pre-Activity Monitoring*—Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below.
- If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.
- *Non-authorized Take Prohibited*—If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

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.

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.

Visual Monitoring

The following visual monitoring measures are proposed in the IHA.

- Biological monitoring would occur within one week before the Project's start date, to establish baseline observations.
- Monitoring distances, in accordance with the identified shutdown, Level A, and Level B zones, will be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.
- Monitoring locations will be established at locations offering best views of the monitoring zone.
- Monitoring will be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case, monitoring will be required 30 minutes prior to restarting pile installation.
- For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone, the pile in progress will be completed and then pile driving suspended until visibility conditions improve.
- At least two PSOs will be actively scanning the monitoring zone during all pile driving activities.
- Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. Chevron shall adhere to the following conditions when selecting observers:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel);

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities;

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

(4) Chevron shall submit PSO CVs for approval by NMFS.

- Chevron will ensure that observers have the following additional qualifications:

(1) Ability to conduct field observations and collect data according to assigned protocols.

(2) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

(5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- For each marine mammal sighting the following must be recorded:

(1) Species, numbers, and, if possible, sex and age class of marine mammals;

(2) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(3) Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(4) Estimated amount of time that the animals remained in the Level B zone

- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area.
- A summary of the following must be included in the report.

(1) Total number of individuals of each species detected within the Level A and Level B Zones, and estimated take extrapolated across entire Level B zone; and

(2) Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Zone, and estimated take extrapolated across entire Level B zone.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If

comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Chevron would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

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

In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Hydroacoustic Monitoring

Sound Source Verification (SSV) testing of would be conducted under this IHA. The purpose of the proposed acoustic monitoring plan is to collect underwater sound-level information at both near and distant locations during vibratory pile extraction and installation and impact pile installation. The plan provides a protocol for hydroacoustic measurements during pile driving operations. Acoustic monitoring would be conducted on a minimum of two of each pile type. Since little data exist for source levels associated with installation of 24-inch square concrete piles (including data on single strike sound exposure level metrics) Chevron would conduct in-situ measurements during installation of eight piles. The SSV testing would be conducted by an acoustical firm with prior experience conducting SSV testing. Final results would be sent to NMFS. Findings may be used to establish Level A and Level B isopleths during impact and vibratory driving. Any alterations to the shutdown or harassment zones based on testing data must be approved by NMFS. The Hydroacoustic Monitoring Plan is contained on the following NMFS website*: https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and extraction associated with Chevron's WMEP project as outlined previously have the potential to injure, disturb or displace marine mammals. Specifically, the specified activities may result in Level B harassment (behavioral disturbance) for seven marine mammal species authorized for take from underwater sound generated during pile driving operations. Level A harassment in the form of PTS may also occur to limited numbers of two species. No marine mammal stocks for which incidental take authorization are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. No serious injuries or mortalities are anticipated to occur as a result of Chevron's pile driving activities.

A limited number of animals (29 harbor seals and 2 harbor porpoises) could experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during impact driving of 24-inch steel H-piles. Installation of these piles would occur over eight days and impact driving will not be the primary method of installation. The piles will mainly be installed only through vibratory driving. Impact driving will only be used if the vibrated pile encounters an obstruction such as an old sunken pile. It is unlikely that this would occur for all four piles projected to be installed each driving day. An assumption of four piles per day was used to calculate Level A zone sizes. If four piles did require impact installation on a single day it is unlikely that the same individual marine mammal would be within the relatively small Level A zone during the installation of every pile. In most instances impact driving will not be required at all. Furthermore, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments

occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment.

The Level B takes that are anticipated and authorized are expected to be limited to short-term behavioral harassment. Marine mammals present near the action area and taken by Level B harassment would most likely show overt brief disturbance *(e.g.* startle reaction) and avoidance of the area from elevated noise level during pile driving. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

The project is not expected to have significant adverse effects on affected marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

The likelihood that marine mammals will be detected by trained observers is high under the environmental conditions described for the project. The employment of the soft-start mitigation measure would also allow marine mammals in or near the shutdown and Level A zone zones to move away from the impact driving sound source. Therefore, the mitigation and monitoring measures are expected to reduce the potential for injury and reduce the amount and intensity of behavioral harassment. Furthermore, the pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

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;
- Anticipated incidences of Level A harassment would be in the form of a small degree of PTS to a limited number of animals;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The relatively short and intermittent duration of in-water construction activities
- The small percentage of the stock that may be affected by project activities (< 17 percent for all stocks); and
- Efficacy of mitigation measures is expected to minimize the likelihood and severity of the level of harassment.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 14 depicts the number of animals that could be exposed to Level A and Level B harassment from work associated with Chevron's project. The analysis provided indicates that authorized takes account for no more than 17.4 percent of the populations of the stocks that could be affected. These are small numbers of marine mammals relative to the sizes of the affected 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

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

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

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Chevron for conducting pile driving activities in San Francisco Bay from June 1, 2018 through May 31, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from June 1, 2018 through May 31, 2019. This IHA is valid only for pile driving and extraction activities associated with Chevron's WMEP project.

2. General Conditions.

(a) A copy of this IHA must be in the possession of Chevron, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are of gray whale *(Eschrichtius robustus),* bottlenose dolphin *(Tursiops truncatus),* harbor porpoise *(Phocoena phocoena),* California sea lion (*Zalophus californianus*), Northern fur seal *(Callorhinus ursinus),* Pacific harbor seal (*Phoca vitulina*), and

Northern elephant seal *Mirounga angustirostris).*

(c) The taking, by Level A and Level B harassment, is limited to the species listed in condition 2(b). See Table 14 for number of takes authorized.

(d) The take of any other species not listed in condition 2(b) of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) Chevron shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

3. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures:

(a) Time Restrictions—For all in-water pile driving activities, Chevron shall operate only during daylight hours (7:00 a.m. to 7:00 p.m.)

(b) Seasonal Restriction—To minimize impacts to listed fish species, pile-driving activities shall occur between June 1 and November 30.

(c) Establishment of Shutdown Zone—For all pile driving/removal and drilling activities, Chevron shall establish a shutdown zone. The shutdown isopleths for pinnipeds (harbor seals, California sea lion, Northern elephant seal, northern fur seal) and mid-frequency cetaceans (common dolphins) shall be set at 35 meters; for high-frequency cetaceans (harbor porpoises) at 250 meters; and for low-frequency cetaceans (gray whales) at 350 meters.

(d) 10-Meter Shutdown Zone—During the in-water operation of heavy machinery (*e.g.,* barge movements), a 10-m shutdown zone for all marine mammals shall be implemented. If a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(e) Establishment of Monitoring Zones for Level A and Level B—Chevron shall establish and monitor Level A harassment zones during impact driving for harbor seal extending to 183 meters and harbor porpoise extending to 408 meters. Chevron shall also establish and monitor Level B harassment zones as depicted in Table 8.

(f) Soft Start—Chevron shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pre-Activity Monitoring—Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below.

(h) If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

(i) Non-authorized Take Prohibited—If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

4. Monitoring.

The holder of this Authorization is required to conduct visual marine mammal monitoring during pile driving activities:

(a) Visual Marine Mammal Observation—The following visual monitoring measures shall be implemented.

(i) Biological monitoring shall occur within one (1) week before the project's start date.

(ii) Monitoring distances, in accordance with the identified shutdown zones, Level A and Level B zones, shall be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.

(iii) Monitoring locations shall be established at locations offering best views of the monitoring zone.

(iv) At least two PSOs shall be actively scanning the monitoring zone during all pile driving activities.

(v) Monitoring shall be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case, monitoring shall be required 30 minutes prior to restarting pile installation.

(vi) For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone or Level A zone, the pile in progress shall be completed and then pile driving suspended until visibility conditions improve.

(vii) Monitoring of pile driving shall be conducted by qualified PSOs, who shall have no other assigned tasks during monitoring periods. Chevron shall adhere to the following conditions when selecting observers:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel);

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities;

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

(4) Chevron shall submit PSO CVs for approval by NMFS.

(viii) Chevron shall ensure that observers have the following additional qualifications:

(1) Ability to conduct field observations and collect data according to assigned protocols;

(2) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

(5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time

information on marine mammals observed in the area as necessary.

(b) Hydroacoustic Monitoring.

(i) Sound Source Verification (SSV) testing shall be conducted as stipulated in the Hydroacoustic Monitoring Plan.

(ii) Acoustic monitoring shall be conducted on a minimum of two of each pile type, except for 24-in square concrete piles shall require monitoring of 8 piles.

(iii) Testing shall be conducted by an acoustical firm with prior experience conducting SSV testing.

(iv) Final results shall be sent to NMFS and may be used to establish shutdown and monitoring isopleths.

(v) Any alterations to the shutdown or monitoring zones based on testing data must be approved by NMFS.

5. Reporting.

(a) A draft marine mammal monitoring report shall be submitted to NMFS within 90 days after the completion of pile driving and removal activities or a minimum of 60 days prior to any subsequent IHAs. A final report shall be prepared and submitted to the NMFS within 30 days following receipt of comments on the draft report from the NMFS.

(b) The report shall include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

(i) Date and time that monitored activity begins or ends;

(ii) Construction activities occurring during each observation period;

(iii) Weather parameters (*e.g.,* percent cover, visibility);

(iv) Water conditions (*e.g.,* sea state, tide state);

(v) Deviation from initial proposal in pile numbers, pile types, average driving times, etc.

(vi) For each marine mammal sighting the following must be recorded:

(1) Species, numbers, and, if possible, sex and age class of marine mammals;

(2) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(3) Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(4) Estimated amount of time that the animals remained in the Level A and B zones

(vii) Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);

(viii) Other human activity in the area.

(ix) The report must contain a summary of the following:

(1) Total number of individuals of each species detected within the Level A and Level B Zones,

(2) Estimated take extrapolated across entire Level B zone; and

(3) Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Zone, and estimated take extrapolated across entire Level B zone.

(x) If no comments are received from NMFS within 30 days, the draft final report shall constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

(c) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Chevron would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the following:

(i) Description of the incident;

(ii) Environmental conditions (*e.g.,* Beaufort sea state, visibility);

(iii) Description of all marine mammal observations in the 24 hours preceding the incident;

(iv) Species identification or description of the animal(s) involved;

(v) Fate of the animal(s); and

(vi) Photographs or video footage of the animal(s) (if equipment is available).

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

(b) In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

(c) In the event that Chevron discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

6. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed Chevron WMEP project. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year renewal IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned, or (2) the activities would not be completed by the time the IHA expires and renewal would allow completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or

mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

• Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: April 24, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–09033 Filed 4–27–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0095.''

• *By email addressed to: OIRAsubmissions@omb.eop.gov* or

• *By mail addressed to:* The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the ''Commission'') by either of the following methods. The copies should refer to ''OMB Control No. 3038–0095.''

• *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;

• By Hand Delivery/Courier to the same address; or

• Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

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.[1] 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 ICR 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.

FOR FURTHER INFORMATION CONTACT: Owen J. Kopon, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5360; email: *okopon@cftc.gov,* and refer to OMB Control No. 3038–0095.

SUPPLEMENTARY INFORMATION:

Title: Large Trader Reporting for Physical Commodity Swaps (OMB Control No. 3038–0095). This is a request for extension and revision of a currently approved information collection.

Abstract: Part 20 of the Commission's regulations (''Reporting Rules'') requires clearing organizations and any persons that are ''reporting entities'' to file swaps position data with the Commission. The Reporting Rules collect clearing member reports from clearing organizations. The Reporting Rules also require position reports from reporting entities for principal and counterparty positions in cleared and uncleared physical commodity swaps. Reporting entities are those persons that are either ''clearing members'' or ''swap dealers'' that are otherwise not clearing members. For purposes of part 20, reporting parties are required to submit data on positions on a futures equivalent basis so as to allow the Commission to assess a trader's market impact across differently structured but linked derivatives instruments and markets. This renewal updates the total requested burden based on available reported data.

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. On February 9, 2018, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 5761 (''60-Day Notice''). The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The respondent burden for this collection is estimated to be as follows: [2]

Estimated Number of Respondents: 4,824.

Estimated Average Annual Burden Hours per Respondent: 1.57.

Estimated Total Annual Number of Responses: 38,408.

Estimated Total Annual Burden Hours: 60,382.

Type of Respondents: Respondents may include clearing organizations, persons that are clearing members or swap dealers that are reporting entities, and large swap counterparties.

(Authority: 44 U.S.C. 3501 *et seq.*)

[1] 17 CFR 145.9.

[2] The burden estimates that appeared in the 60-day Notice contained a calculation error that resulted in double counting burden hours, 83 FR 5761 (Feb. 9, 2018). This calculation error has been corrected and the following adjustments to the previous burden estimates have been made, as indicated above: The Estimated Average Annual Burden Hours per Respondent have been corrected from 1.55 to 1.57; the Estimated Total Annual Number of Responses has been adjusted from 56,088 to 38,408; and the Estimated Total Annual Burden Hours have been adjusted from 86,902 to 60,382.

Dated: April 25, 2018.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018–09064 Filed 4–27–18; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Subcommittee Meetings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public subcommittee meetings.

SUMMARY: This notice sets forth the announcement of two public subcommittee meetings of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board its subcommittees.

DATES: The Consumer Advisory Board Mortgages and Small Business Lending Markets subcommittee meeting will take place on Thursday, May 10, 2018 from approximately 1:00 p.m. to 2:00 p.m. eastern standard time via conference call. The Consumer Advisory Board Card, Payment, and Deposits Markets Subcommittee meeting will take place on Tuesday, May 22, 2018 from approximately 3:00 p.m. to 4:30 p.m. eastern standard time via conference call.

Access: The subcommittee meetings will be conducted via conference call and are open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Advisory Board and Councils Office, External Affairs, 1700 G Street NW, Washington, DC 20552. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Consumer Advisory Board states that: The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

Typically, the subcommittees meet during the in person advisory group meetings as well as in between via conference calls. Each subcommittee has an advisory group member who serves as the chair and staff from the CFPB's Advisory Board and Councils Office to assist the chair in conducting the meeting.

II. Agenda

The CAB Mortgages and Small Business Lending Markets subcommittee will discuss two of the Bureau's Requests for Information (RFI) related to the Call for Evidence initiative by Acting Director Mulvaney. The CAB Card, Payment, and Deposits Markets subcommittee will discuss will lessons learned on designing financial products and features to meet the needs of specific targeted vulnerable populations. Additionally, the subcommittee will also discuss one of the Bureau's Request for Information (RFI) related to the Call for Evidence initiative by Acting Director Mulvaney.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meetings. The comments will be provided to the CAB members for consideration. Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Individuals who wish to join the Consumer Advisory Board Mortgages and Small Business Lending Markets Subcommittee meeting must RSVP via this link *https://goo.gl/ojr1Yj* by noon, May 9, 2018. Individuals who wish to join the Consumer Advisory Board Card, Payment, and Deposits Markets Subcommittee meeting must RSVP to *https://goo.gl/ojr1Yj* by noon, May 21, 2018. Members of the public must RSVP by the due date and must include ''CAB Mortgages and Small Business Lending Markets'' or ''CAB Card, Payment, and Deposits Markets'' in the subject line of the RSVP.

III. Availability

A summary of these meetings will be available after the meeting on the Bureau's website *www.consumerfinance.gov.*

Dated: April 24, 2018.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2018–09077 Filed 4–27–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2018–HQ–0001]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: 30-Day information collection 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 May 30, 2018.

ADDRESSES: 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, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Aircraft and Personnel Automated Clearance System (APACS); OMB Control Number 0701–XXXX.

Type of Request: New.

Number of Respondents: 492,000.

Responses per Respondent: 1.

Annual Responses: 492,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 246,000.

Needs and Uses: The information collection requirement is necessary to obtain PII information which is used by in-country U.S. Embassy approvers to grant country travel clearances, Geographical Combatant Commands approvers to grant theater travel clearances and by the Office of Secretary of Defense for Policy approvers to grant special area travel clearances. Aircrew PII information is used for verification, identification and authentication of travelers for aircraft and personnel travel clearances, as required by DoDD 4500.54E, DoD Foreign Clearance Program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

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.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–09009 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare Draft Supplemental Environmental Impact Statement for the Allatoona Lake Water Supply Storage Reallocation Study and Updates to Weiss and Logan Martin Reservoir Project Water Control Manuals in the Alabama-Coosa-Tallapoosa River Basin

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Mobile District, intends to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate potential changes to the Water Control Manuals (WCMs) for three reservoirs in the Alabama-Coosa-Tallapoosa (ACT) River Basin and to the Master WCM for the ACT River Basin. The USACE intends to conduct a water supply storage reallocation study to evaluate a March 30, 2018 request by Georgia and Cobb County-Marietta Water Authority (CCMWA) for increased water supply usage at Allatoona Lake and changed storage accounting methodology. The Draft SEIS will be prepared as an integrated document with the reallocation study. The reallocation study with the integrated Draft SEIS will address the water supply storage request and updated operating criteria and guidelines for managing the water storage and release actions of Federal water managers and will evaluate the associated environmental impacts of the proposed federal action, pursuant to the National Environmental Policy Act (NEPA). The USACE also intends to update the WCMs for the Alabama Power Company's Weiss and Logan Martin Reservoirs in the ACT River Basin.

ADDRESSES: Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628–0001.

FOR FURTHER INFORMATION CONTACT: Questions about the NEPA process should be directed to: Mr. Mike Malsom, Inland Environment Team, Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628–0001; Telephone (251) 690–2023; delivered by electronic facsimile at (251) 694–3815; or by electronic mail: *ACT-ACR@usace.army.mil.* You may also request to be included on the mailing list for public distribution of notices, meeting announcements and documents.

SUPPLEMENTARY INFORMATION:

Background. Eighteen major dams (six Federal and twelve non-Federal), which form sixteen reservoirs, are located in the ACT River Basin. The ACT River Basin provides water resources for multiple purposes from northwestern Georgia down through central Alabama and to the Gulf Coast at the mouth of Mobile Bay, extending a distance of approximately 320 miles and encompassing an area of approximately 22,800 square miles. Pursuant to Section 7 of the Flood Control Act of 1944, the USACE prescribes regulations for the operation of its projects in the ACT River Basin for their authorized purposes, and for the non-federal projects that contain storage for the purposes of navigation or flood control (flood risk management), through water control plans and manuals.

In May 2015, the USACE completed a long-term effort to update the Master WCM for the ACT River Basin, including updated WCMs for all five USACE projects (Allatoona Dam and Lake, Carters Dam and Lake, Robert F. Henry Lock and Dam, Millers Ferry Lock and Dam and Claiborne Lock and Dam) and two of four Alabama Power Company (APC) projects with navigation or flood control storage (H. Neely Henry Dam and Lake and R.L. Harris Dam and Lake). WCMs for the other two APC projects with navigation and flood control storage, Logan Martin Dam and Lake (Reservoir) and Weiss Dam and Lake (Reservoir), were not updated at that time. A pending request by the State of Georgia for additional water supply storage and changes to storage accounting practices at Allatoona Lake was also not included within the scope of the 2015 WCM update and EIS.

In January 2018, the U.S. District Court for the Northern District of Georgia issued a judgment in *Georgia et al.* v. *U.S. Army Corps of Engineers,* No. 14-cv-03593 (Jan. 9, 2018), holding that the USACE had unreasonably delayed action on Georgia's water supply request, and directing the USACE to take final action responding to that request by March 1, 2021. Following that court decision, the State of Georgia and CCMWA submitted an updated request to the USACE on March 30, 2018, and the USACE intends to evaluate actions necessary to respond to Georgia's request, as well as one or more reasonable alternatives, in the proposed SEIS.

The USACE did not include updates to the WCMs for the Weiss and Logan Martin Reservoirs in the 2015 ACT River Basin Master WCM because further study of flood risk management issues at both projects was required. The USACE intends to update the WCMs for two APC reservoir projects in the ACT River Basin, including evaluation of APC's proposal to raise the winter level for recreation and at the same time to lower the upper limit of the induced surcharge operation at the Weiss Dam and Lake (Reservoir) and the Logan Martin Dam and Lake (Reservoir). These projects will be evaluated for flood impacts. Current Water Control Plans for the Weiss and Logan Martin Reservoirs, originally issued in the 1960s, contain surcharge curves with elevations higher than the respective flood easements acquired by APC. The easement at the Weiss Reservoir is 572 feet mean sea level (msl) and the surcharge curve indicates flood control storage to 574 feet msl. At the Logan Martin Reservoir, the easement elevation is 473.5 feet msl and the surcharge curve indicates flood control storage to 477 feet msl. Due to the flood risk management operational responsibilities of the USACE, the APC proposals would be evaluated along with other alternatives in the FR/SEIS and those manuals may be updated.

Because the USACE is simultaneously considering proposals to modify operations and update WCMs at three different ACT River Basin projects, the USACE intends to evaluate the effects of these proposals through a single EIS, which would supplement the Final EIS for the ACT River Basin completed in May 2015. As part of this analysis, the USACE will consider the effects of the proposed changes on operations of the ACT system of projects for all purposes, and would revise the ACT Master WCM to incorporate the updated Allatoona Lake, Weiss Reservoir, and Logan Martin Reservoir WCMs and to reflect changes, if any, in overall system operations.

WCMs are guidance documents that assist Federal water managers in the operation of individual and multiple interdependent Federal reservoirs on the same river system. The manuals provide technical, historical, hydrological, geographic, demographic, policy and other information that guide the proper management of reservoirs during times of high water, low water, and normal conditions. The manuals also contain drought plans and zones to assist Federal water managers in knowing when to reduce or increase reservoir releases, and how to ensure the safety of dams during extreme conditions. The authority and guidance for the USACE to prepare and update these manuals may be found, inter alia, in Section 7 of the 1944 Flood Control Act, the Federal Power Act, Section 9 of Public Law 436–83, and the following USACE Engineering Regulations (ER): ER 1110–2–240, ER 1110–2–241, ER 1110–2–1941 and ER 1110–2–8156.

The evaluations of the proposed water supply storage reallocation at the Allatoona Lake and the flood impacts at several APC projects in the Coosa Basin may require updates to the current WCMs. The updated WCMs would be provided as appendices to the SEIS.

Public participation throughout the water supply storage reallocation and flood pool evaluation process is essential. The USACE invites full public participation at all stages to promote open communication and better decision making. All persons, stakeholders, and organizations that have an interest in water-related resources in the ACT Basin, including minority, low-income, disadvantaged and Native American groups, are urged to participate in this NEPA analysis process. Assistance will be provided upon request to anyone having difficulty understanding how to participate. Dates and locations for public scoping meetings will be announced by future publication in the **Federal Register** and in the local news media. Tentative dates for publication of the Draft SEIS and other opportunities for public involvement will also be announced at that time. Public comments are welcomed at any time throughout the NEPA process.

Cooperating Agencies. The lead responsibility for this action rests with the USACE. USACE intends to coordinate and/or consult with an interagency team of Federal and State agencies during scoping and preparation of the FR/SEIS. A decision will be made during the scoping process whether other agencies will serve in an official role as cooperating agencies.

Scoping. The 2015 ACT WCM update involved the States (Alabama and Georgia), stakeholders, and the public, in identifying areas of concern; collecting and developing water resources, environmental, and socioeconomic data; and developing tools to assist in decisions affecting water resources within the Basin. Scoping for this SEIS will continue to build upon the knowledge and information developed during the previous EIS process. Scoping meetings with agencies and stakeholder groups will be scheduled to identify any significant issues and data gaps, focus on the alternatives to be evaluated, and to identify any appropriate updated tools to assist in the evaluation of alternatives and analysis of impacts.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 2018–09031 Filed 4–27–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2018–HQ–0007]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 29, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Naval Sea Systems Command (SEA 05C), 1333 Isaac Hull Avenue SE, STOP 1340, Washington Navy Yard, Washington, DC 20376–1340, or call (202) 781–5069.

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.

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 Start Printed Page 68409 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.

Annual Burden Hours: 800.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 4 hours.

Frequency: Annual.

Respondents are businesses involved in shipbuilding and/or ship repair who provide NAVSEA and MARAD with information and a list of facilities available for the construction or repair of ships that is utilized in a database for assessing the production capacity of the individual shipyards.

Dated: April 24, 2018.

Shelly E. Finke,

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

[FR Doc. 2018–09004 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–HQ–0005]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: 30-Day information collection 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 May 30, 2018.

ADDRESSES: 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, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personalized Recruiting for Immediate and Delayed Enlistment Modernization (PRIDE Mod); OMB Control Number 0703–0062.

Type of Request: Extension.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 60,000.

Needs and Uses: The information collection requirement is necessary to support the U.S. Navy's process to recruit and access persons for naval service.

Affected Public: Individuals and Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 24, 2018.

Shelly E. Finke,

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

[FR Doc. 2018–09003 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2016–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: 30-Day information collection 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 May 30, 2018.

ADDRESSES: 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, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Prospective Studies of US Military Forces: The Millennium Cohort Study; OMB Control Number 0703–0064.

Type of Request: Reinstatement.

Number of Respondents: 134,351.
Responses per Respondent: 1.
Annual Responses: 134,351.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 100,764.
Needs and Uses: The information collection requirement is necessary to respond to recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service. The Millennium Cohort Family Study also evaluates the impact of military life on military families.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Ms. Jasmeet Seehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–09008 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Meeting of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of closed teleconference meeting.

SUMMARY: This notice sets forth the agenda for the April 25, 2018 closed teleconference meeting of the National Assessment Governing Board's (Governing Board) Nominations Committee, which has been delegated by the Governing Board to take action on behalf of the Board. This notice provides information to members of the public who may be interested in providing written comments related to the work of the Governing Board. Notice of this meeting is required under § 10(a)(2) of the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION: *Statutory Authority and Function:* The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Information on the Governing Board, its membership and 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 selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

The Governing Board's Nominations Committee fulfills the responsibility of making recommendations for potential candidates to fill Governing Board vacancies for terms of service established by law in various Governing Board categories. Following the Nominations Committee recommendations and Governing Board action, the final slate of candidates is submitted to the Secretary of Education for consideration and appointment to serve on the Governing Board, as defined in Section 302, Public Law 107–279; see *https://nagb.gov/about-naep/the-naep-law.html.*

During the March 3, 2018 Governing Board meeting, the Governing Board delegated authority to the Nominations Committee to receive, review, and take action on the final slate of recommended candidates for the position of Chief State School Officer. This delegation of authority allows the timely submission of candidates to the Secretary of Education for consideration and action to meet the October 1, 2018 appointment of a Chief State School Officer. On January 11, 2018, the Nominations Committee held a closed teleconference meeting to discuss nominees for the position of Chief State School Officer to complete the term of service (term expires on September 30, 2018) of the former incumbent, Massachusetts Commissioner of Education, Mitchell Chester. Notice of that meeting was provided in the **Federal Register**, 82 FR 60188 (December 19, 2017) (*https://www.gpo.gov/fdsys/pkg/FR-2017-12-19/pdf/2017-27127.pdf*). This is the same position on the Governing Board that will be discussed during the April 25 closed teleconference of the Nominations Committee.

On April 25, 2018, the Nominations Committee will meet via teleconference in closed session from 5:30 p.m. to 6:00 p.m. EST. The Committee will discuss nominees for the position of Chief State School Officer, whose term will begin October 1, 2018. 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.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting deliberations for the March 2018 Board meeting via meeting minutes wherein the delegation of authority to take action on behalf of the Board was issued to the Nominations Committee by the Governing Board at *www.nagb.gov* beginning on April 15, 2018 by 10:00 a.m. ET. The report of the March 25 closed meeting will be available also on April 15, 2018.

Electronic Access to this Document: The official version of this document is published in the **Federal Register**. 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 website. 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: Public Law 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: April 24, 2018.

William J. Bushaw,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2018–08977 Filed 4–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0050]

Public Comment Request; Historically Black College and University (HBCU) Capital Financing Program Deferment Request

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: ED is requesting public comment on a proposed instrument.

DATES: Interested persons are invited to submit comments on or before May 9, 2018.

ADDRESSES: To access and review the document related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0050. 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, Room 216–44, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions, please contact Donald Watson, Executive Director, Historically Black College and University (HBCU) Capital Financing Program, U.S. Department of Education, 400 Maryland Avenue SW, Room 278–02, Washington, DC 20202; telephone: (202) 453–6166; email: *donald.watson@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education is seeking feedback from the public on a proposed Deferment Request for the HBCU Capital Financing Program. The Department of Education is especially interested in public comment addressing how the Department might enhance the quality, utility, and clarity of the information to be collected. This collection of information does not require OMB review and approval because the proposed instrument will not collect data from ten or more entities. Please note that written comments received in response to this notice will be considered public records.

Abstract: The Consolidated Appropriations Act, 2018 provided $10,000,000 to be used for the deferment of loans made to private Historically Black Colleges and Universities under part D of title III of the Higher Education Act of 1965, as amended. The proposed information collection will be used to determine each applicant's eligibility for deferment, obtain required documentation and assurances to support the deferment request, and prioritize among applicants if requests exceed appropriations.

Dated: April 25, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–09048 Filed 4–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–451]

Application to Export Electric Energy; Viasyn, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Viasyn, Inc. (Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 30, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 30, 2018, DOE received an application from the Applicant for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. Viasyn intends to apply for market-based rate authority with the Federal Energy Regulatory Commission's (FERC), however, it has not made that application at this point in time.

In its application, the Applicant states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Applicant's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–451. An additional copy is to be provided to RJ Schembs, Viasyn, Inc., 2440 Camino Ramon, Suite 299, San Ramon, CA 94583.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on April 24, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2018–09030 Filed 4–27–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board; Notice of Open Teleconference

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, May 18, 2018 from 12:00 p.m. to 2:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Phone number 202–287–5718, and email: *michael.li@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Welcome new STEAB members. Discuss priorities of the Board for the near future. Understand the interests of the members. Updates from the Office of Energy Efficiency and Renewable Energy.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB website at: *http://www.energy.gov/eere/steab/state-energy-advisory-board.*

Issued at Washington, DC, on April 24, 2017.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–09034 Filed 4–27–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1427–000]

Rio Bravo Rocklin, a California Joint Venture; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Rio Bravo Rocklin, A California Joint Venture's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 14, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09043 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1419–000]

Walnut Ridge Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Walnut Ridge Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 14, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers, to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09041 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–192–000]

Dominion Energy Questar Pipeline, LLC; Notice of Application

Take notice that on April 10, 2018, Dominion Energy Questar Pipeline, LLC (DEQP) 333 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP18–192–000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations to amend a certificate parameter of the Chalk Creek Aquifer Storage Facility (Chalk Creek), located in Summit County, Utah. The proposed amendment will eliminate operating parameter 3 and enable DEQP's customer to inject gas into Chalk Creek sooner to prepare for peak storage needs, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to L. Bradley Burton, Director-Regulatory, Certificates & Tariffs, Dominion Energy Services, Inc., 333 South State Street, P.O. Box 45360, Salt Lake City, Utah 84145–0360, by phone (801) 324–2459, or *brad.burton@dominionenergy.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be

required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 15, 2018.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09036 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–186–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on April 11, 2018, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing Transco's Southeastern Trail Project (Southern Trail). This system expansion project would enable Transco to provide an additional 296,375 dekatherms per day (Dt/d) of firm transportation service to five shippers, and to abandon certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern Trail comprises the construction and operation of approximately 7.72 miles of new natural gas pipeline loop located along Transco's existing mainline; approximately 60,720 horsepower of additional compression at three existing facilities in Virginia (Compressor Station 185, Compressor Station 175, and Compressor Station 165), reversal and/or deodorization modifications at eight existing Mainline Facilities in South Carolina, Georgia, and Louisiana, and modifications at 13 existing Mainline Valve Sites in South Carolina and Georgia. The Project also includes the retirement and abandonment of 10 compressor units and related buildings and ancillary equipment at Transco's existing Compressor Station 165 in Pittsylvania County, Virginia.

Questions regarding this filing may be directed Andre Pereira, at (713) 215–4362, P.O. Box 1396, Houston, Texas 77251. In addition, Transco has established a toll-free telephone number, (713) 215–2264 so that parties can call with questions about Southern Trail, as well as an email support address (*PipelineExpansion@williams.com*).

This filing is available for review at the Commission's Washington, DC offices, or may be viewed on the Commission's website at *http://www.ferc.gov* using the e-Library link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211 (2016), by the comment date below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission, and will receive copies of all documents filed by the applicant and by all other parties. A party must submit filings made with the Commission by mail, hand delivery, or internet, in accordance with Rule 2001 of the Commission's Rules of Practice and Procedure, id. 385.2001. A copy must be served on every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the e-filing link. The Commission strongly encourages electronic filings.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations. [2]

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying the requested authorizations will be issued.

Comment Date: 5:00 p.m. Eastern Time, May 24, 2018.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09035 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

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: EC18–88–000.
Applicants: Calpine Corporation, CPPIB Calpine Canada Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Calpine Corporation, et al.
Filed Date: 4/23/18.
Accession Number: 20180423–5228.
Comments Due: 5 p.m. ET 5/14/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1420–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2018–04–23 Certificate of Concurrence for ARES Nevada UFA to be effective 3/13/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5205.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1421–000.
Applicants: RE Garland LLC.
Description: § 205(d) Rate Filing: RE Garland Concurrence Filing to Amended Shared Facilities Agreement to be effective 4/21/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5208.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1422–000.
Applicants: RE Garland A LLC.
Description: § 205(d) Rate Filing: RE Garland A Concurrence Filing to Amended Shared Facilities Agreement to be effective 4/21/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5210.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1423–000.
Applicants: RE Gaskell West 1 LLC.
Description: § 205(d) Rate Filing: RE Gaskell West 1 Concurrence Filing to Amended Shared Facilities Agreement to be effective 4/21/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5211.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1424–000.
Applicants: Rio Bravo Fresno, A California Joint Venture.
Description: Baseline eTariff Filing: Baseline new to be effective 4/23/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5214.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1425–000.
Applicants: RE Gaskell West 1 LLC.
Description: § 205(d) Rate Filing: RE Gaskell West 1 Concurrence Filing to LGIA Co-Tenancy Agreement to be effective 4/21/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5216.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1426–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Tariff Clean-Up Filing 2Q2018 to be effective 7/1/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5217.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1427–000.
Applicants: Rio Bravo Rocklin, A California Joint Venture.
Description: Baseline eTariff Filing: Baseline new to be effective 4/23/2018.
Filed Date: 4/23/18.
Accession Number: 20180423–5218.
Comments Due: 5 p.m. ET 5/14/18.

Docket Numbers: ER18–1428–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–04–24_Termination of SA 3007 ATC-Upper Michigan E&P Agreement (J703) to be effective 4/25/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5007.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1429–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–04–24_Termination of SA 3008 ATC-Upper Michigan E&P Agr (J704) to be effective 4/25/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5008.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1430–000.
Applicants: Skylar Energy Resources LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 4/25/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5075.
Comments Due: 5 p.m. ET 5/15/18.

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: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09037 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1424–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Rio Bravo Fresno, A California Joint Venture

This is a supplemental notice in the above-referenced proceeding Rio Bravo Fresno, A California Joint Venture's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 14, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09042 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1430–000]

Skylar Energy Resources LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Skylar Energy Resources LLCs application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 14, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09044 Filed 4–27–18; 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: RP18–732–000.

Applicants: Big Sandy Pipeline, LLC.

Description: § 4(d) Rate Filing: April 2018 Cleanup Filing to be effective 5/23/2018.

Filed Date: 4/23/18.

Accession Number: 20180423–5033.

Comments Due: 5 p.m. ET 5/7/18.

Docket Numbers: RP18–733–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Orion Project—Long Term Agreements to be effective 6/1/2018.

Filed Date: 4/23/18.

Accession Number: 20180423–5221.

Comments Due: 5 p.m. ET 5/7/18.

Docket Numbers: RP18–734–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Penalty Revenues.

Filed Date: 4/23/18.

Accession Number: 20180423–5222.

Comments Due: 5 p.m. ET 5/7/18.

Docket Numbers: RP18–735–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Interruptible Transportation Revenue Sharing.

Filed Date: 4/23/18.

Accession Number: 20180423–5223.

Comments Due: 5 p.m. ET 5/7/18.

Docket Numbers: RP18–736–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Transportation Imbalances and Cash-out Activity.

Filed Date: 4/23/18.

Accession Number: 20180423–5224.

Comments Due: 5 p.m. ET 5/7/18.

Docket Numbers: RP18–737–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Operational Imbalances and Cash-out Activity.

Filed Date: 4/23/18.

Accession Number: 20180423–5225.

Comments Due: 5 p.m. ET 5/7/18.

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: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09039 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1431–000.
Applicants: RE Astoria 2 LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to Shared Facilities Agreement to be effective 4/21/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5176.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1432–000.
Applicants: RE Gaskell West LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to Shared Facilities Agreement to be effective 4/21/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5186.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1433–000.
Applicants: RE Gaskell West 3 LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 4/21/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5213.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1434–000.
Applicants: RE Gaskell West 4 LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 4/21/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5219.
Comments Due: 5 p.m. ET 5/15/18.

Docket Numbers: ER18–1435–000.
Applicants: RE Gaskell West 5 LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 4/21/2018.
Filed Date: 4/24/18.
Accession Number: 20180424–5221.
Comments Due: 5 p.m. ET 5/15/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–29–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Update to April 16, 2018 Application of Orange and Rockland Utilities, Inc. for an Order Authorizing the Issue and Sale of Short-term Debt.
Filed Date: 4/24/18.
Accession Number: 20180424–5172.
Comments Due: 5 p.m. ET 5/15/18.

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: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09038 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1416–000]

CED Wistaria Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding CED Wistaria Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 14, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09040 Filed 4–27–18; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of information collection—Uniform Guidelines on Employee Selection Procedures—extension without change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission gives notice that it has submitted the information described below to the Office of Management and Budget (OMB) for a three-year extension without change.

DATES: Written comments on this final notice must be submitted on or before May 30, 2018.

ADDRESSES: Comments on this final notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs,

Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, email *oira_submission@omb.eop.gov.* Commenters are also encouraged to send comments to the EEOC online at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on the website for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy by delivery by COB on May 30, 2018. Hard copy comments should be sent to Bernadette Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''fax'') machine before the same deadline at (202) 663–4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) The EEOC will post online at *http://www.regulations.gov* all comments submitted via this website, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters' Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 663–4681 (voice) or (202) 663–7026 (TDD).

Overview of This Information Collection

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR part 1607, 41 CFR part 60–3, 28 CFR part 50, 5 CFR part 300.

OMB Number: 3046–0017.

Type of Respondent: Businesses or other institutions; Federal Government; State or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Standard Industrial Classification Code (SIC): Multiple.

Description of Affected Public: Any employer, Government contractor, labor organization, or employment agency covered by the Federal equal employment opportunity laws.

Respondents: 961,709.

Responses:[2] 961,709.

Recordkeeping Hours: 7,825,132 per year.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The Uniform Guidelines provide fundamental guidance for all Title VII-covered employers about the use of employment selection procedures. The records addressed by UGESP are used by respondents to ensure that they are complying with Title VII and Executive Order 11246; by the Federal agencies that enforce Title VII and Executive Order 11246 to investigate, conciliate, and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws. While there is no data available to quantify these benefits, the collection of accurate applicant flow data enhances each employer's ability to address any deficiencies in recruitment and selection processes, including detecting barriers to equal employment opportunity.

On February 22, 2018, the Commission published a 60-Day Notice informing the public of its intent to request an extension without change of the information collection requirements from the Office of Management and Budget. 83 FR 7720 (February 22, 2018). No comments were received.

Burden Statement: There are no reporting requirements associated with UGESP. The burden being estimated is the cost of collecting and storing a job applicant's gender, race, and ethnicity data.

The only paperwork burden derives from this recordkeeping. Only employers covered under Title VII and Executive Order 11246 are subject to UGESP. For the purposes of burden calculation, employers with 15 or more employees are counted. The number of such employers is estimated at 961,709 which combines estimates from private employment,[1] the public sector,[2] colleges and universities,[3] and referral unions.[4]

This burden assessment is based on an estimate of the number of job applications submitted to all Title VII-covered employers in one year, including paper-based and electronic applications. The total number of job applications submitted every year to covered employers is estimated to be 1,878,031,768, based on a National Organizations Survey[5] average of approximately 35 applications[6] for every hire and a Bureau of Labor Statistics data estimate of 62,719,000 annual hires.[7] This figure also includes 146,506 applicants for union membership reported on the EEO–3 form for 2016.

The employer burden associated with collecting and storing applicant demographic data is based on the following assumptions: Applicants would need to be asked to provide three pieces of information—sex, race/ethnicity, and an identification number (a total of approximately 13 keystrokes);

[1] Source: U.S. Small Business Administration: Statistics of U.S. Business, Release Date 1/2017. (*https://www.sba.gov/advocacy/firm-size-data*). Select U.S. Static Data, U.S. Data.

[2] Source of original data: 2012 Census of Governments: Employment. Individual Government Data File (*https://www2.census.gov/govs/apes/12ind_all_tabs.xls*), Local Downloadable Data zip file 12ind_all_tabs.xls. The number of government entities was adjusted to only include those with 15 or more employees.

[3] Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2015. Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2015–1 (*https://nces.ed.gov/pubs2016/2016111.pdf*).

[4] EEO–3 Reports filed by referral unions in 2016 with EEOC.

[5] The National Organizations Survey is a survey of business organizations across the United States in which the unit of analysis is the actual workplace (*http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/04074*).

[6] The number of applications provided by NOS is 35.225 and therefore calculations will not result in the same total amount due to rounding.

[7] Bureau of Labor Statistics Job Openings and Labor Turnover Survey, 2016 annual level data (Not seasonally adjusted), is the source of the original data (*http://www.bls.gov/jlt/data.htm*). Select ''Multi-screen Data Search'', then ''Total Non-farm'' and click ''Next Form (after each of the following selections choose ''next form'' as well) Choose ''Total US'', then ''Hires'', then ''Level-In Thousands'', then ''Not Seasonally Adjusted''. Select ''Retrieve Data''. Add all monthly numbers for the year 2016. Please remember that counts are in thousands. The BLS figure (62,719,000) has been adjusted to only include hires by firms with 15 or more employees.

the employer would need to transfer information received to a database either manually or electronically; and the employer would need to store the 13 characters of information for each applicant. Recordkeeping costs and burden are assumed to be the time cost associated with entering 13 keystrokes.

Assuming that the required recordkeeping takes 30 seconds per record, and assuming a total of 1,878,031,768 paper and electronic applications per year (as calculated above), the resulting UGESP burden hours would be 7,825,132. Based on a wage rate of $15.21 per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately $119,020,258 per year for Title VII-covered employers. We expect that the foregoing assumptions are over-inclusive, because many employers have electronic job application processes that should be able to capture applicant flow data automatically.

However, the average burden per employer is relatively small. As stated above, we estimate that UGESP applies to 961,709 employers. Therefore, the cost per covered employer is less than $124 each ($119,020,258 divided by 961,709 is equal to $123.76). Additionally, UGESP allows for simplified recordkeeping for employers with more than 15 but less than 100 employees.[8]

For the Commission.

Dated: April 18, 2018.

Victoria A. Lipnic,

Acting Chair.

[FR Doc. 2018–08993 Filed 4–27–18; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0109]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before June 29, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to OMB control number 3064–0109. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@FDIC.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Notice of Branch Closure.

OMB Number: 3064–0109.

Form Number: None.

Affected Public: Insured depository institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated time per response (hours)	Frequency of response	Average total annual estimated burden (hours)
Adoption of Closure Policy	Recordkeeping	Mandatory	23	8	One time	184
Notice of Closure	Disclosure	Mandatory	683	2	One time	1,366
Total Estimated Annual Burden						1,550

General Description of Collection: Section 42 of the Federal Deposit Insurance Act mandates that an insured depository institution closing a branch notify its primary federal regulator not later than 90 days prior to the closing. The statute also provides that a notice be posted on the premises of the branch for the 30-day period immediately prior to the closing and that the customers be notified in a mailing at least 90 days prior to the closing. Each insured depository institution that has one or more branches is required to adopt a written policy for branch closings.

Burden Estimate Methodology and Assumptions: There are no changes in the methodology or substance of this information collection. FDIC believes that the existing estimate of the time required to develop a written branch closure policy and to provide the required branch closure notices is accurate. The number of branch closure notifications is closely related to the number of branches closed, while the number of closure policy adoptions equals the number newly chartered branch banking institutions and the number of existing banking institutions that transition from having no branches to having at least one branch. To derive an estimate of average annual branch closure notifications, FDIC Risk Management Supervision (RMS) staff counted the number of full-service standalone and in-store branches that closed between 2015 and 2017. In addition, FDIC staff count the number of

[8] *See* 29 CFR 1607.15A(1): *Simplified recordkeeping for users with less than 100 employees.* In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO–1, *et seq.,* reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year: (a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin; (b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and (c) The selection procedures utilized (either standardized or not standardized).

newly chartered branch banking institutions and the number of institutions that transitioned from having no branches to having at least one branch. FDIC records reflect that there were 683 branch closures, on average, each year between 2015 and 2017. FDIC estimates that an average of 23 institutions each year will transition from having no branches to having at least one branch.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Dated at Washington, DC, on April 25, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–09014 Filed 4–27–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities (Regulation F; OMB No. 7100–0331).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Recordkeeping Requirements Associated with Limitations on Interbank Liabilities.

Agency form number: Regulation F.

OMB control number: 7100–0331.

Frequency: On occasion.

Respondents: Depository institutions insured by the Federal Deposit Insurance Corporation (FDIC).

Estimated number of respondents: State member banks: 829; non-member banks: 3,396; national banks: 921; state savings banks: 309; federal savings banks: 228; savings & loan associations: 195; insured federal branch of foreign banking organization: 4; insured state branch of foreign banking organization: 6; non-depository trust company member: 2; cooperative banks: 33.

Estimated average hours per response: 8 hours.

Estimated annual burden hours: State member banks: 6,632; non-member banks: 27,168; national banks: 7,368; state savings banks: 2,472; federal savings banks: 1,824; savings & loan associations: 1,560; insured federal branch of foreign banking organization: 32; insured state branch of foreign banking organization: 48; non-depository trust company member: 16; cooperative banks: 264.

General description of report: Section 206.3 of the Board's Regulation F, 12 CFR 206.3, requires insured depository institutions to establish and maintain policies and procedures designed to prevent excessive exposure to ''correspondents,'' which include non-affiliated U.S. insured depository institutions and non-affiliated foreign banks. Regulation F limits the risks that the failure of a correspondent would pose to insured depository institutions. Where exposure to a correspondent is significant, the policies and procedures shall require periodic reviews of the financial condition of the correspondent and shall take into account any deterioration in the correspondent's financial condition. Where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made in full or in a timely manner, the policies and procedures should limit the bank's exposure to the correspondent, either by the establishment of internal limits or by other means.

The Board has updated its burden estimate for this information collection to account for all depository institutions insured by the Federal Deposit Insurance Corporation (FDIC), all of which are potential respondents. The Board's previous burden estimate accounted only for state member banks. The increase in burden reflects the update to correct the number of potential respondents, and is not due to a change in burden for individual institutions.

Legal authorization and confidentiality: The Board's Legal Division has determined that the recordkeeping requirements of Regulation F are mandatory and authorized by section 23 of the Federal Reserve Act, as added by section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 371b–2). Because the Board does not collect any information, no issue of confidentiality normally arises. However, if a compliance program becomes a Board record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Current actions: On January 23, 2018, the Board published a notice in the **Federal Register** (83 FR 3148) requesting public comment for 60 days on the extension for three years, without revision, of the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities (Regulation F). The comment period for this notice expired on March 26, 2018.

The Board did not receive any comments.

Board of Governors of the Federal Reserve System, April 24, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–08992 Filed 4–27–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Financial Statements for Holding Companies (FR Y–9 family of reports) (OMB No. 7100–0128).

DATES: Comments must be submitted on or before June 29, 2018.

ADDRESSES: You may submit comments, identified by *FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, or FR Y–9CS,* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for comment on information collection proposal:

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

Report title: Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: Bank holding companies, savings and loan holding companies, securities holding companies, and U.S. Intermediate Holding Companies (collectively, holding companies (HCs)).

Estimated average hours per response: FR Y–9C (non-advanced approaches holding companies): 46.29 hours; FR Y–9C (advanced approached holding companies HCs): 47.54 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Estimated number of respondents: FR Y–9C (non-advanced approaches holding companies): 623; FR Y–9C (advanced approached holding companies): 18; FR Y–9LP: 761; FR Y–9SP: 3,613 FR Y–9ES: 84; FR Y–9CS: 236.

Estimated annual burden hours: FR Y–9C (non-advanced approaches holding companies): 115,355 hours; FR Y–9C (advanced approached holding companies): 3,423 hours; FR Y–9LP: 16,042 hours; FR Y–9SP: 39,020; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

General description of report: The FR Y–9C serves as standardized financial statements for the consolidated holding company. The FR Y–9 family of reporting forms continues to be the primary source of financial data on HCs that examiners rely on between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and

acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. HCs file the FRY–9C on a quarterly basis, FR Y–9LP quarterly, and the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Proposed revisions:

The Board is proposing a number of revisions to the FR Y–9C requirements, most of which are consistent with proposed changes to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100–0036). The proposed revisions to the FR Y–9C include deleting certain data items, consolidating existing data items into new data items, and adding new or raising existing reporting thresholds for certain data items to reduce reporting burden. As discussed below, all of the proposed changes resulted from an extensive analysis of the uses of Call Report data which is generally aggregated on the FR Y–9C report, to include a series of nine surveys conducted over a 19-month period that began in mid-July 2015 and ended in mid-February 2017. Based on the results of the user surveys, the Board identified data items to be considered for removal and new or revised reporting thresholds to reduce burden. The Board believes that consistent changes should be made to the FR Y–9C to ensure burden reductions are fully realized. Additional detail on specific line items that will be revised are discussed below. The proposed revisions would be effective beginning with the reports reflecting the June 30, 2018, report date. The proposed changes include:

- Combining certain data items into new or existing data items pertaining to

(1) Interest-only strips on Schedule HC–F—Other Assets;

(2) Certain 1–4 family residential mortgage banking activities on Schedule HC–P;

(3) Loans measured at fair value and the unpaid principal balances of such loans on HC–Q—Memoranda;

(4) Certain types of credit exposures, ownership interests, credit exposures to securitization facilities sponsored by HCs, and transactions involving small business obligations on Schedule HC–S; and

(5) Certain detail on Schedule HC–V—Variable Interest Entities (VIEs), on consolidated VIEs used as asset-backed commercial paper (ABCP) conduits and certain detail on other VIEs;

- Deleting certain data items on Schedules HC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets; HC–P—1–4 Family Residential Mortgage Banking Activities in Domestic Offices; HC–Q—Assets and Liabilities Measured at Fair Value on a Recurring Basis-Memoranda; and Schedule HC–S—Servicing, Securitization, and Asset Sale Activities; and
- Adding new and revising existing reporting thresholds for certain data items on Schedule HC–P, HC–Q, and HC–S.

Detailed Discussion of Proposed Revisions

Schedule HC–F—Other Assets

The Board proposes to combine the reporting of interest-only strips receivable on Schedule HC–F, which are currently reported in data items 3(a) for those on mortgage loans and 3(b) for those on other financial assets, into a single new item 3, Interest-only strips receivable.

Schedule HC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets

The Board proposes to delete Schedule HC–N, Memoranda, data items 5(b)(1) and 5(b)(2), columns A through C pertaining to past due and nonaccrual status of the fair value and unpaid principal balance of held-for-investment loans measured at fair value. Memorandum item 5(a), ''Loans and leases held for sale,'' would be renumbered as item 5 for columns A through C.

Schedule HC–P—1–4 Family Residential Mortgage Banking Activities in Domestic Offices

The Board proposes to modify the reporting criteria for Schedule HC–P by removing the current $1 billion asset-sized threshold and applying only the Schedule's existing activity-based threshold. As proposed, Schedule HC–P would be completed by HCs where any of the following residential mortgage banking activities (in domestic offices) exceeds $10 million for two consecutive quarters:

- Closed-end and open-end first lien and junior lien 1–4 family residential mortgage loan originations and purchases for resale from all sources during a calendar quarter;
- Closed-end and open-end first lien and junior lien 1–4 family residential mortgage loan sales during a calendar quarter; or
- Closed-end and open-end first lien and junior lien 1–4 family residential mortgage loans held for sale or trading at calendar quarter-end.

The Board also proposes to combine a number of data items pertaining to 1–4 family residential mortgage banking activity detail collected in this schedule for closed-end loans and commitments under open-end loans for retail originations (item 1), wholesale originations and purchases (item 2), mortgage loans sold (item 3), mortgage loans held for sale or trading (item 4), and repurchases and indemnifications of mortgage loans (item 6). Specifically, the Board proposes to:

- Combine 1(a), 1(b), and 1(c)(1) into new data item 1;
- Combine 2(a), 2(b), and 2(c)(1) into new data item 2;
- Combine 3(a), 3(b), and 3(c)(1) into new data item 3;
- Combine 4(a), 4(b), and 4(c)(1) into new data item 4; and
- Combine 6(a), 6(b), and 6(c)(1) into new item 6.

The Board also proposes to combine data items 5(a) and 5(b) pertaining to noninterest income from the sale, securitization, and servicing of closed-end and open-end 1–4 family residential mortgage loans into new data item 5. In addition, the Board proposes to remove data items 1(c)(2), 2(c)(2), 3(c)(2), 4(c)(2), and 6(c)(2) pertaining to the principal amount funded for open-end loans extended under lines of credit for each of the above listed categories.

Schedule HC–Q—Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Board proposes to modify the reporting criteria for Schedule HC–Q by applying an activity threshold. Schedule HC–Q would be completed only by HCs that (1) have elected to report financial instruments or servicing assets and liabilities at fair value under a fair value option with changes in fair value recognized in earnings, or (2) are required to complete Schedule HC–D, Trading Assets and Labilities. HCs that do not meet either of these criteria would no longer need to complete this schedule, regardless of asset size.

The Board also proposes to delete column B (domestic offices) on Schedule HC–Q, for the fair value and the unpaid principal balance of such loans currently collected in Memorandum items 3 and 4, respectively. The Board proposes to combine certain existing loan categories in Memorandum items 3 and 4 for fair value option loans secured by

1–4 family residential properties, detail on revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit; closed-end loans secured by first liens on 1–4 family residential properties; and closed-end loans secured by junior liens on 1–4 family residential properties that currently are reported for domestic offices in column B would be consolidated into a single category and collected for the consolidated HC. For fair value option loans secured by real estate other than 1–4 family residential properties, detail on construction, land development, and other land loans; loans secured by farmland; loans secured by multifamily (5 or more) residential properties; and loans secured by nonfarm nonresidential properties that currently are reported for domestic offices in column B would be consolidated into a single category and collected for the consolidated HC. These proposed revisions would replace the existing items for total fair value option loans secured by real estate for the consolidated HC. For fair value option consumer loans, detail for the consolidated HC on credit cards, other revolving credit plans, automobile loans, and other consumer loans would be consolidated into a single category. More specifically, the Board proposes to:

- Delete existing Memoranda items 3(a) and 4(a), column A, on the fair value and the unpaid principal balance of consolidated loans secured by real estate;
- Combine existing Memorandum items 3(a)(3)(a), 3(a)(3)(b)(i), and 3(a)(3)(b)(ii), column B, into new Memorandum item 3(a)(1) for the fair value of consolidated loans secured by 1–4 family residential properties measured at fair value;
- Combine existing Memorandum items 3(a)(1), 3(a)(2), 3(a)(4), and 3(a)(5), column B, into new Memorandum item 3(a)(2) for the fair value of all other loans secured by real estate measured at fair value;
- Combine existing Memorandum items 3(c)(1) through 3(c)(4) into new Memorandum item 3(c) pertaining to the fair value of all consumer loans measured at fair value;
- Combine existing Memorandum items 4(a)(3)(a), 4(a)(3)(b)(i), and 4(a)(3)(b)(ii), column B, into new Memorandum item 4(a)(1) pertaining to the unpaid principal balance of consolidated loans secured by 1–4 family residential properties that are measured at fair value;
- Combine existing Memorandum items 4(a)(1), 4(a)(2), 4(a)(4), and 4(a)(5), column B, into new Memorandum item 4(a)(2) pertaining to the unpaid principal balance of all other loans secured by real estate measured at fair value for the consolidated HC; and
- Combine existing Memorandum items 4(c)(1) through 4(c)(4) into new Memorandum item 4(c) pertaining to the unpaid principal balance of all consumer loans measured at fair value.

Schedule HC–S—Servicing, Securitization, and Asset Sale Activities

The Board proposes the following revisions to Schedule HC–S:

- Combine data items 2(a), 2(b), and 2(c) into new item 2, columns A through G, pertaining to the maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements in the form of retained interest-only strips, subordinated securities and other residual interests, and standby letters of credit and other enhancements;
- Add a reporting threshold of $100 billion or more in total assets before HCs must complete Schedule HC–S, data item 3, which is used for reporting unused commitments to provide liquidity to structures reported in item 1 involving assets sold and securitized by the reporting HC with servicing retained or with recourse or other seller-provided credit enhancements;
- Combine data items 6(a) and 6(b) pertaining to ownership (or seller's) interests carried as securities or loans into new data item 6. The Board also proposes to add a reporting threshold of $10 billion or more in total consolidated assets before HCs must complete data item 6;
- Delete data items 7(a) and 7(b) pertaining to loan amounts included in ownership (or seller's) interests carried as securities that are 30–89 days past due and 90 days or more past due, respectively;
- Delete data items 8(a) and 8(b) pertaining to charge-offs and recoveries, respectively, on loan amounts included in the ownership (or seller's) interests carried as securities that are currently reported in 6(a);
- Combine data item 9, columns B (home equity lines) and C (credit card receivables), pertaining to the maximum amount of credit exposures arising from credit enhancements in the form standby letters of credit, purchased subordinated securities, and other enhancements provided by the reporting HC to other institutions' securitization structures, into existing column G, All other loans, all leases, and all other assets;
- Add a reporting threshold of $10 billion or more in total assets for reporting unused commitments to provide liquidity to other institutions' securitization structures in item 10. The Board also proposes to combine data item 10, columns B (home equity lines) and C (credit card receivables), pertaining to a reporting institution's unused commitments to provide liquidity to other institutions' securitization structures, respectively, into existing column G;
- Combine data item 11, columns B through F, pertaining to assets sold with recourse or other seller-provided credit enhancements and not securitized, into existing column G. The activities reported in columns B through F pertain to home equity lines, credit card receivables, auto loans, other consumer loans, and commercial and industrial loans, respectively;
- Combine data item 12, columns B through F, pertaining to the maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements on assets sold with recourse or other seller-provided credit enhancements and not securitized, into existing column G;
- Delete Memorandum items 1(a) and 1(b) pertaining to the outstanding principal balance and the amount of retained recourse, respectively, on small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, and include the amounts previously reported in these two memorandum items in either items 1 or 2 (column F) or items 11 and 12 (column G), depending on whether the obligations were securitized or not securitized, respectively; and
- Add a reporting threshold of $10 billion or more in total assets for reporting the detail on ABCP conduits in Memorandum items 3(a)(1) through 3(b)(2), and the amount of outstanding credit card fees and finance charges included in credit card receivables sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements in Memorandum item 4. To complete Memorandum item 4, a HC with $10 billion or more in total assets would also need to meet one of the existing criteria for reporting this information, *i.e.,* the HC, together with affiliated institutions, has outstanding credit card receivables that exceed $500 million as of the report date, or the HC is a credit card specialty HC (as defined in the instructions).

Schedule HC–V—Variable Interest Entities

The Board proposes to consolidate information collected on consolidated VIEs used as ABCP conduits (column B)

and other VIEs (column C) for all items into a single column B covering all VIEs other than those used as securitization vehicles (which will continue to be reported in column A). In lieu of the detailed breakdown of assets and liabilities of ABCP conduit VIEs currently reported in column B, the Board proposes to collect data on the total assets and total liabilities of such VIEs in new data items 5 and 6, respectively. For these ABCP conduit VIEs, the total assets item would include the assets that could be used only to settle these VIEs' obligations, which are currently reported in items 1(a) through 1(k), column B, and all other assets of these VIEs, which are currently reported in item 3, column B; the total liabilities items would include these VIEs, liabilities for which creditors do not have recourse to the general credit of the reporting bank, which are currently reported in items 2(a) through 2(e), column B, and all other liabilities of the VIEs, which are currently reported in item 4, column B. In the two columns that would remain, the Board proposes to:

- Combine data items 1(b) and 1(c), pertaining to held-to-maturity and available-for-sale securities, into a single new item 1(b), Securities not held for trading;
- Combine data items 1(e) through 1(g), pertaining to loans and leases held for sale, loans and leases held for investment, and the allowance for loan and lease losses, into a single new item 1(c), Loans and leases held for investment, net of allowance, and held for sale;
- Combine data items 2(c) and 2(d), pertaining to commercial paper and other borrowed money, into a single new item 2(a), Other borrowed money;
- Delete data items 1(d), 1(h), and 1(i), pertaining to securities purchased under agreements to resell, trading assets (other than derivatives), and derivative trading assets. The data currently reported in these items would be included in existing data item 1(k), Other assets, which would be renumbered as data item 1(e). Existing data item 1(j) Other real estate owned would be renumbered 1(d); and
- Delete VIE detail on data items 2(a) and 2(b), pertaining to securities sold under agreements to repurchase and derivative trading liabilities. The data currently reported in these items would be included in existing data item 2(e), Other liabilities, which would be renumbered as data item 2(b).

Legal authorization and confidentiality: The FR Y–9 family of reports is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), section 10 of Home Owners' Loan Act (12 U.S.C. 1467a(b)) and section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') (12 U.S.C. 1850a(c)(1)), and section 165 of the Dodd-Frank Act (12 U.S.C. 5365). The obligation of covered institutions to report this information is mandatory.

With respect to the FR Y–9LP, FR Y–9SP, FR Y–9ES, FR Y–9CS, as well as most items on the FR Y–9C, the information collected would generally not be accorded confidential treatment. If confidential treatment is requested by a respondent, the Board will review the request to determine if confidential treatment is appropriate.

With respect to the FR Y–9C, Schedule HI's item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential. Such treatment is appropriate because the data is not publicly available and could cause substantial harm to the competitive position of the respondent. The public release of this confidential data may impair the Board's future ability to collect similarly confidential data. Thus, this information may be kept confidential under exemptions (b)(4) of the Freedom of Information Act, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)), and (b)(8) of the Freedom of Information Act, which exempts from disclosure information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)). If confidential treatment is requested by a respondent for other items in the FR Y–9C, the Board will review the request to determine if confidential treatment is appropriate.

Board of Governors of the Federal Reserve System, April 24, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–09000 Filed 4–27–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services announces the next meeting of the Community Preventive Services Task Force (CPSTF) on June 13–14, 2018, in Atlanta, Georgia.

DATES: The meeting will be held on Wednesday, June 13, 2018, from 8:30 a.m. to 6:00 p.m. EDT and Thursday, June 14, 2018, from 8:30 a.m. to 1:00 p.m. EDT.

ADDRESSES: The CPSTF Meeting will be held at the CDC Edward R. Roybal Campus, Centers for Disease Control and Prevention Headquarters (Building 19), 1600 Clifton Road NE, Atlanta, GA 30329. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION**. Information regarding meeting logistics will be available on the Community Guide website (*www.thecommunityguide.org*) closer to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Onslow Smith, Center for Surveillance, Epidemiology and Laboratory Services; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E–69, Atlanta, GA 30329, phone: (404) 498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: This space-limited meeting is open to the public. All meeting attendees must register. To ensure completion of required security procedures and access to the CDC's Global Communications Center, U.S. citizens intending to attend in person must register by June 6, 2018, and non-U.S. citizens intending to attend in person must register by May 7, 2018. Failure to register by the dates identified could result in the inability to attend the CPSTF meeting in person.

Those unable to attend the meeting in person are able to do so via webcast. CDC will send the webcast URL to registrants upon receipt of their registration. All meeting attendees must

register by June 8, 2018 to receive the webcast information. CDC will email webcast information from the *CPSTF@cdc.gov* mailbox.

Public Comment: A public comment period, limited to three minutes per person, will follow the CPSTF's discussion of each systematic review. Individuals wishing to make public comments must indicate their desire to do so with their registration by providing their name, organizational affiliation, and the topic to be addressed (if known). Public comments will become part of the meeting summary. Public comment is not possible via webcast.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews on existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when they are determining what best meet the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled in the *Guide to Community Preventive Services (The Community Guide).*

Matters proposed for discussion: Mental Health (Effectiveness of School-Based Depression and Anxiety Prevention Interventions); Obesity Prevention and Control (Combined School-Based Diet and Physical Activity Interventions); Physical Activity (Effectiveness of Active Transportation to School Interventions); Women's Health (Exercise-based Interventions for Gestational Hypertension); and discussion of Community Guide effectiveness and economic methods. The agenda is subject to change without notice.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is CDC's headquarters and is located at 1600 Clifton Road NE, Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must register by the dates outlined under *Meeting Accessibility.* In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Edward R. Roybal Campus through the front entrance on Clifton Road. Vehicles may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government-issued photo identification (*e.g.,* a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. CDC Security personnel will issue a visitor's ID badge at the entrance to Building 19. Visitors may receive an escort to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: April 25, 2018.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018–09021 Filed 4–27–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–70 and CMS–R–72]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 30, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer review Organization Information and Supporting Regulations; *Use:* The Peer Review Improvement Act of 1982 authorizes quality improvement organizations (QIOs), formally known as peer review organizations (PROs), to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. The QIOs are required to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties. The information provided in these notices is used by the patients, practitioners and providers to: Obtain access to the data maintained and collected on them by the QIOs; add additional data or make changes to existing QIO data; and reflect in the QIO's record the reasons for the QIO's disagreeing with an individual's or provider's request for amendment. *Form Number:* CMS–R–70 (OMB control number: 0938–0426); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profits; *Number of Respondents:* 53,850; *Total Annual Responses:* 436,984; *Total Annual Hours:* 404,208. (For policy questions regarding this collection contact Tennille Coombs at 410–786–3472.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in 42 CFR 478.18, 478.34, 478.36, 478.42, QIO Reconsiderations and Appeals; *Use:* In the event that a beneficiary, provider, physician, or other practitioner does not agree with the initial determination of a Quality Improvement Organization (QIO) or a QIO subcontractor, it is within that party's rights to request reconsideration. The information collection requirements 42 CFR 478.18, 478.34, 478.36, and 478.42, contain procedures for QIOs to use in reconsideration of initial determinations. The information requirements contained in these regulations are on QIOs to provide information to parties requesting the reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are actively being disputed. *Form Number:* CMS–R–72 (OMB control number: 0938–0443); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households and Business or other for-profit institutions; *Number of Respondents:* 20,129; *Total Annual Responses:* 60,489; *Total Annual Hours:* 22,014. (For policy questions regarding this collection contact Tennille Coombs at 410–786–3472).

Dated: April 25, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–09067 Filed 4–27–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Behavioral Health, Office of Clinical and Preventive Services Domestic Violence Prevention Initiative

Announcement Type: New Single Source

Funding Announcement Number: HHS–2018–IHS–DVPI–0001

Catalog of Federal Domestic Assistance Number: 93.933

Key Dates

Application Deadline Date: July 1, 2018.

Review Date: July 9–11, 2018.

Earliest Anticipated Start Date: July 15, 2018.

Signed Tribal Resolutions Due Date: July 1, 2018.

Proof of Non-Profit Status Due Date: July 1, 2018.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) Office of Clinical and Preventive Services (OCPS), Division of Behavioral Health (DBH), is accepting an application for a single source grant with the Oglala Sioux Tribe (OST) to continue the expansion of advocacy and shelter services for domestic and sexual violence on the Pine Ridge Reservation under the Domestic Violence Prevention Program Initiative (DVPI). The DVPI was first established by the Omnibus Appropriations Act of 2009, Public Law 111–8, 123 Stat. 524, 735, and continued in the annual appropriations acts since that time. This program is authorized under the authority of 25 U.S.C. 13, the Snyder Act, and the Indian Health Care Improvement Act, at 25 U.S.C. 1665a and 1665m. This program is described in the Catalog of Federal Domestic Assistance under 93.933.

Background

The DBH serves as the primary source of national advocacy, policy development, management and administration of behavioral health, alcohol and substance abuse, and family violence prevention programs. The DVPI promotes the development of evidence-based and practice-based models that represent culturally appropriate prevention and treatment approaches to domestic and sexual violence from a community-driven context. IHS proposes to enter into a single source grant with the OST based on prior collaboration between the IHS and the OST during the DVPI pilot project years 2010–2015 to expand advocacy services to victims of domestic and sexual violence (DSV) including shelter, and emergency housing.

Purpose

The purpose of this Single Source grant is to provide funding to assist victims of DSV on the Pine Ridge Reservation. Specifically, IHS is requesting an application that will enhance or expand the OST's crisis response efforts, shelter and emergency housing services, and/or training and technical assistance opportunities. Examples of grant activities may include:

- Purchase of modular buildings to expand shelter services.
- Emergency travel and transportation costs to surrounding shelters.
- Training for staff and/or individuals delivering DSV services.
- Technical assistance.

Single Source Justification

The OST is identified as the single source for this grant based on funding allocated by the IHS to benefit the OST from the 2010–2015 DVPI. The OST exceeded expectations as a partner during the DVPI pilot in responding to the needs of victims of DSV in the servicing area of the OST and is the best resource to continue expansion on the proposed services in this announcement.

II. Award Information

Type of Award

Grant.

Estimated Funds Available

The total amount of funding identified for this project is approximately $920,000. Submitted application should not exceed the total amount of available funding and should be divided over two years in the budget portion of the application. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One application will be accepted under this announcement for OST and only one award will be issued.

Period of Performance

The period of performance is for two years and will run consecutively from July 15, 2018, to July 14, 2020.

III. Eligibility Information

1. Eligibility

The award is offered as a single source grant to the OST.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Funding for year one should focus on program planning and development and the year two focus should be on program implementation. If the application budget exceeds the highest dollar amount outlined under the Estimated Funds Available section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Tribal Resolution

An official signed Tribal resolution from the OST must be received by the DGM prior to a Notice of Award (NoA) being issued to the applicant for funding. However, if an official signed Tribal resolution cannot be submitted with the electronic application submission prior to the official application deadline date, a draft Tribal resolution must be submitted by the deadline in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a NoA will not be issued to the applicant and they will not receive any IHS funds until such time as they have submitted a signed resolution to the Grants Management Specialist listed in this funding announcement.

Proof of Non-Profit Status

If the OST is claiming non-profit status they must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

The applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS DGM by obtaining documentation confirming delivery (*i.e.* FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.grants.gov* or *http://www.ihs.gov/dgm/funding/.*

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Categorical Budget and Budget Justification (must be single-spaced and not exceed 5 pages).
- Project Narrative (must be single-spaced and not exceed 15 pages).
  - OST background information.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a two-page Timeline Chart.
- Tribal Resolution(s).
- Letters of Support from OST Tribal Council.
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart.
- Documentation of current Office of Management and Budget (OMB) Financial Audit. Acceptable forms of documentation include:
  - Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC website at *https://harvester.census.gov/facdissem/main.aspx.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than 15 pages and must: be single-spaced, type written, have consecutively numbered pages, use black type not smaller than 12 point, and be printed on one side only of standard size 8–½″ × 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first 15 pages will be reviewed. The narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, categorical budget and budget justification, and/or other appendix items.

There are four parts to the narrative: Part A—Goals and Objectives; Part B—Project Activities; Part C—Timeline Chart; and Part D—Organizational Capacity, Staffing/Administration.

Below are additional details about what must be included in the narrative and the page limitations for each narrative and budget submitted.

Part A: Goals and Objectives (3 Page Limit)

- Describe the purpose of the proposed project that includes a clear statement of goals.
- Outline the goals and objectives for the grant project.

Part B: Project Activities (6 Page Limit)

- Clearly outline all project activities that align with the applicant's goals and objectives.
- Describe anticipated barriers to progress of the project and how the barriers will be addressed.
- Identify any other programs, agencies, or organizations that will participate in the proposed project. Describe their roles, responsibilities, and demonstrate their commitment to the project. Include a list of these organizations as an attachment to the application. In the attached list, indicate the organizations that the Tribe has worked with or currently works with. [Note: The attachment will not count as part of the 15-page maximum.]

Part C: Timeline (2 Page Limit)

Provide a timeline chart for two years depicting a realistic timeline for the period of performance showing key activities, milestones, and responsible staff. [Note: The timeline chart should be included as part of the project narrative as specified here. It should not be placed as an attachment.]

Part D: Organizational Capacity and Staffing/Administration (4 Page Limit)

- Describe the management capability and experience of the OST in administering similar grants and projects.
- Discuss the OSTs experience and capacity to provide culturally appropriate/competent services to victims of DSV.
- Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).
- Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.
- Provide a complete list of staff positions for the project, including the project director, project coordinator, and other key personnel, showing the role of each and their level of effort and qualifications.
- Include position descriptions as attachments to the project proposal/application for the project director, project coordinator, and all key personnel. Position descriptions should not exceed one page each. [Note: Attachments will not count against the 15 page maximum.]
- For individuals that are identified and currently on staff, include a biographical sketch for the project director, project coordinator, and other key positions as attachments to the project proposal/application. Each biographical sketch should not exceed one page. [Note: Attachments will not count against the 15 page maximum.] Do not include Personally Identifiable Information, Resumes, or Curriculum Vitae.

B. Categorical Budget and Budget Justification

This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable allowable, allocable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative and should not exceed 5 pages. [Note: The categorical budget and budget justification does not count against the project narrative page maximum of 15 pages.]

3. Submission Dates and Times

The application must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Gettys (*paul.gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant will be awarded to the applicant.
- IHS will not acknowledge receipt of application.
- It is acceptable to include administrative costs for planning.

6. Electronic Submission Requirements

The application must be submitted electronically. Please use the following website, *http://www.grants.gov* to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Follow the instructions for submitting an application under the Package tab. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). A written waiver request must be sent to *grantspolicy@ihs.gov* with a copy to *robert.tarwater@ihs.gov*. The waiver must: (1) Be documented in writing (emails are acceptable), before submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval must be submitted along with the hardcopy of the application that is mailed to DGM. The paper application that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. The paper application must be received by the DGM no later than 5:00 p.m. EDT on the Application Deadline Date listed in the Key Dates section on page one of this announcement. A late application

will not be accepted for processing or considered for funding. Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *https://www.grants.gov* as the registration process for SAM and *Grants.gov* could take up to 15 working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the Office of Clinical and Preventive Services, Division of Behavioral Health will notify the applicant that the application has been received.
- An emailed application will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy website: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 15 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

Your application will be reviewed and scored according to the quality of responses to the required application components in Sections A–E:

Part A—Introductions and Need for Assistance.

Part B—Project Objective(s), Work Plan and Approach.

Part C—Program Evaluation.

Part D—Organizational Capacity, Staffing/Administration.

Part E—Categorical Budget and Budget Justification.

A. Introduction and Need for Assistance (History and Current Situation) (15 Points)

This section should demonstrate knowledge of concerns and issues regarding DSV specific to the OST. Identify the proposed catchment area and provide demographic information on the population to receive services. Describe the stakeholders and resources in the catchment area providing services to victims of DSV.

- Describe the need to increase the capacity to implement, sustain, and improve effective DSV services including shelter and emergency housing consistent with the purpose of the program.
- Describe the existing service gaps, barriers, and other systemic challenges related to the need for planning and capacity building and coordination of DSV services.

B. Project Objective(s), Work Plan and Approach (35 Points)

This section should demonstrate a sound and effective annual work plan that will support accomplishment of deliverables and milestones of the project. The work plan should be designed to:

- Describe the purpose of the proposed project.
- Affirm the goals of the project are consistent with priorities of the Tribal government and support of this application.
- Describe how project activities will increase the capacity to serve victims of DSV.
- Describe potential project partners and community resources in the catchment area that can participate in

the planning process and capacity building.

- Describe anticipated barriers to progress of the project and how these barriers will be addressed.
- Provide a timeline chart depicting a realistic timeline for the entire period of performance showing key activities, milestones, and responsible staff. [**Note**: The timeline chart should be part of the project narrative as specified in the ''Requirements for Project Proposals'' section. It should not be placed in as an attachment.]

C. Program Evaluation (15 Points)

- Define the criteria to be used to evaluate planning activities.
- Clearly describe the methodologies and parameters that will be used to determine if the needs identified are being met and if the outcomes identified are being achieved.
- Ensure the goals and objectives are measurable and consistent with the purpose of the program and meet the needs of the people to be served.
- Ensure the measurement includes activities that will lead to sustainability.

D. Organizational Capabilities, Key Personnel and Qualifications (20 Points)

- Describe the management capability and experience of the OST in administering similar grants and projects.
- Identify the department/division that will administer this project. Include a description of this entity, its function, and its placement within the organization.
- Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.
- Provide a list of staff positions for the project.
- Include position descriptions as attachments to the application for the behavioral health staff, project director, project coordinator, and all key personnel. Position descriptions should not exceed one page each.
- For individuals that are currently on staff, include a biographical sketch for each individual that will be listed as the behavioral health staff, project director, project coordinator, and other key positions. Describe the experience of identified staff in domestic violence and sexual assault work in the community/communities. Include each biographical sketch as attachments to the project proposal/application. Biographical sketches should not exceed one page per staff member. Reviewers will not consider information past page one. Do not include Personally Identifiable Information, Resumes, or Curriculum Vitae.

E. Categorical Budget and Budget Justification (15 Points)

- Include a line item budget for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for both budget years. The budget should match the scope of work described in the project narrative for the first budget year expenses only.
- The applicant must provide a budget narrative justification of the items included in the proposed line item budget.
- Applicants should ensure that the budget and budget narrative are aligned with the project narrative. The categorical budget and budget justification the applicant provides will be considered by reviewers in assessing the applicant's submission, along with the material in the project narrative.
- The categorical budget and budget justification must detail the grantee's estimated first year budget for project planning and activities and second year budget for program implementation not to exceed the total award amount of $920,000.
- The categorical budget and budget justification must not exceed 5 single-spaced pages. [Note: The categorical budget and budget justification does not count against the project narrative page maximum of 15 pages.]

Additional Documents Can Be Uploaded as Appendix Items in Grants.gov

- Work plan and time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. An application that meets the eligibility criteria will be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS Program to review and make recommendations on your application. The technical review process ensures selection of quality projects in a national competition for limited funding. An incomplete application that is non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The NoA is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, the budget period, and the period of performance.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60 and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page (SF–424) of the application. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicant

An approved but unfunded applicant that meets the minimum scoring range and was deemed by the ORC to be ''Approved'', but was not funded due to a lack of funds, will have their application held by DGM for a period of one year. If additional funding becomes available during the course of FY 2018 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-cost-services/indian-tribes.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: 1) the imposition of special award provisions; and 2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *https://pms.psc.gov.* It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: 1) the period of performance start date was October 1, 2010, or after, and 2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at *http://www.ihs.gov/dgm/policytopics/.*

D. Compliance With Executive Order 13166 Implementation of Services

Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your

programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *https://www.hhs.gov/ocr/about-us/contact-us/index.html* or call (800) 368–1019 or TDD (800) 537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following website: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf*, and send it directly to the: U.S. Department of Health and Human Services, Office for Civil Rights, 200 Independence Ave. SW, Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) at *https://www.fapiis.gov* before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *robert.tarwater@ihs.gov*.

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201.

URL: *http://oig.hhs.gov/fraud/report-fraud/index.asp* (Include ''Mandatory Grant Disclosures'' in subject line) Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *mandatorygranteedisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Selina T. Keryte, Public Health Analyst, DVPI National Coordinator, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 08N34, Rockville, MD 20857, Phone: (301) 443–7064, Fax: (301) 594–6213, Email: *selina.keryte@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Andrew Diggs, Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2241, Fax: (301) 594–0899, Email: *andrew.diggs@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114, DGM main line: (301) 443–5204, Fax: (301) 594–0899, Email: *paul.gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: April 9, 2018.

Michael D. Weahkee,

Assistant Surgeon General, U.S. Public Health Service, Acting Director, Indian Health Service.

[FR Doc. 2018–08990 Filed 4–27–18; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review Meeting (2018/10).

Date: June 6–8, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Graduate Minneapolis, 615 Washington Avenue SE, Minneapolis, MN 55414.

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov*.

Dated: April 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08984 Filed 4–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Minority Health and Health Disparities on May 11, 2018, 8:00 a.m. to adjournment, Neuroscience Center Building, Conference Rooms C, D, and E, Bethesda, MD 20892, which was published in the **Federal Register** on March 30, 2018, 83 FR 13765.

The notice is being amended to include an addendum to the agenda of the National Advisory Council on Minority Health and Health Disparities. During the Open session on May 11, 2018, the NIMHD Reorganization Update will be presented from 12:10 p.m.–12:30 p.m. The meeting location remains the same. This meeting is partially closed to the public.

Dated: April 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08988 Filed 4–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Review.

Date: June 14, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, Independence I, II, and III Conference Rooms, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08986 Filed 4–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 22, 2018.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W 200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08985 Filed 4–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) National Advisory Council (NAC) will meet in person on May 22–24, 2018, in San Diego, CA. The meeting will be open to the public.

DATES: The NAC will meet Tuesday, May 22, 2018, from 8:00 a.m. to 5:00 p.m., Wednesday, May 23, 2018, from 8:00 a.m. to 5:00 p.m., and Thursday, May 24, 2018, from 8:30 a.m. to 1:00 p.m. Pacific Daylight Time (PDT). Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held at The Hyatt Regency Mission Bay (*https://missionbay.regency.hyatt.com/en/hotel/home.html*) located at 1441 Quivira Road, San Diego, CA 92109. It is recommended that attendees register with FEMA by May 18, 2018, by providing their name, telephone number, email address, title, and organization to the person listed in the **FOR FURTHER INFORMATION CONTACT** below.

For information on facilities or services for people with disabilities and others with access and functional needs (including people who use mobility aids, require medication or portable medical equipment, use service animals, need information in alternate formats, or rely on personal assistance services), or to request assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC. The ''Agenda'' section below outlines these issues. The full agenda and any related documents for this meeting will be posted by Friday, May 18, 2018, on the NAC website at *http://www.fema.gov/national-advisory-council.* Written comments must be submitted and received by 5:00 p.m. Eastern Daylight Time on May 18, 2018, identified by Docket ID FEMA–2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-RULES@fema.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (540) 504–2331. Please include a cover sheet addressing the fax to ATTN: Deana Platt.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW, Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

A public comment period will be held on Wednesday, May 23, 2018, from 1:00 p.m. to 1:15 p.m. PDT. All speakers must limit their comments to 5 minutes. Comments should be addressed to the NAC. Any comments not related to the agenda topics will not be considered by the NAC. To register to make remarks during the public comment period, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** by May 18, 2018. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Deana Platt, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184, telephone (202) 646–2700, Fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC website is: *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from State, local, and Tribal governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from State, local, and Tribal governments, the private sector, and nongovernmental organizations.

Agenda: On Tuesday, May 22, 2018, the NAC will hear about priorities across FEMA Regions from the Region IX team and receive briefings on response and recovery, protection and national preparedness, and the Integrated Public Alert and Warning System Subcommittee to the NAC.

On Wednesday, May 23, 2018, the NAC will hear an update on flood insurance and mitigation and a separate update on strategic priorities from the FEMA Administrator. The three permanent and one ad-hoc NAC subcommittees (Federal Insurance and Mitigation Subcommittee, Preparedness and Protection Subcommittee, Response and Recovery Subcommittee, and Tribal Subcommittee) will discuss and deliberate on their potential recommendations and, if appropriate, vote on recommendations for the FEMA Administrator. Potential recommendation topics include (1) building a culture of preparedness, (2) simplifying recovery programs, and (3) promoting pre-disaster mitigation.

On Thursday, May 24, 2018, the NAC will review potential topics for research before the next in-person meeting, discuss recent disasters, review agreed upon recommendations, and confirm charges for the subcommittees.

The full agenda and any related documents for this meeting will be posted by Friday, May 18, 2018, on the NAC website at *http://www.fema.gov/national-advisory-council.*

Dated: April 24, 2018.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–09075 Filed 4–27–18; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM

and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of August 16, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*. The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 3, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Limestone County, Alabama and Incorporated Areas Docket No.: FEMA–B–1655	
City of Athens	Engineering and Community Development Department, 1600 Elm Street West, Athens, AL 35611.
City of Decatur	Building Department, 402 Lee Street Northeast, 4th Floor, Decatur, AL 35601.
City of Huntsville	City Hall, 308 Fountain Circle, Huntsville, AL 35801.
City of Madison	Engineering Department, 100 Hughes Road, Madison, AL 35758.
Town of Ardmore	Town Hall, 26494 1st Street, Ardmore, AL 35739.
Town of Mooresville	Limestone County Engineering Department, 310 West Washington Street, Athens, AL 35611.
Unincorporated Areas of Limestone County	Limestone County Engineering Department, 310 West Washington Street, Athens, AL 35611.
Madison County, Alabama and Incorporated Areas Docket No.: FEMA–B–1655	
City of Huntsville	City Hall, 308 Fountain Circle, Huntsville, AL 35801.
City of New Hope	City Hall, 5496 Main Drive, New Hope, AL 35760.
Town of Triana	Town Hall, 640 6th Street, Triana, AL 35756.
Unincorporated Areas of Madison County	Madison County Department of Public Works, Engineering Department, 266–C Shields Road, Huntsville, AL 35811.
Morgan County, Alabama and Incorporated Areas Docket No.: FEMA–B–1655	
City of Decatur	Building Department, 402 Lee Street Northeast, 4th Floor, Decatur, AL 35601.
City of Hartselle	City Hall, 200 Sparkman Street Northwest, Hartselle, AL 35640.
Town of Falkville	Town Hall, 21 North 1st Avenue, Falkville, AL 35622.
Town of Priceville	Town Hall, 242 Marco Drive, Priceville, AL 35603.
Town of Somerville	Town Hall, 24 High Street, Somerville, AL 35670.
Town of Trinity	Town Hall, 35 Preston Drive, Trinity, AL 35673.
Unincorporated Areas of Morgan County	Morgan County Engineer's Office, 580 Shull Road Northeast, Hartselle, AL 35640.
Chatham County, Georgia and Incorporated Areas Docket No.: FEMA–B–1701	
City of Bloomingdale	City Hall, 8 West Highway 80, Bloomingdale, GA 31302.
City of Garden City	City Hall, 100 Central Avenue, Garden City, GA 31405.
City of Pooler	City Hall, 100 Southwest Highway 80, Pooler, GA 31322.
City of Port Wentworth	City Hall, 305 South Coastal Highway, Port Wentworth, GA 31407.
City of Savannah	Department of Development Services, 5515 Abercorn Street, Savannah, GA 31405.
City of Tybee Island	City Hall, 403 Butler Avenue, Tybee Island, GA 31328.
Town of Thunderbolt	Town Hall, 2821 River Drive, Thunderbolt, GA 31404.
Town of Vernonburg	Office of the Town of Vernonburg Mayor, 110 East President Street, 2nd Floor, Savannah, GA 31401.
Unincorporated Areas of Chatham County	Old Chatham County Courthouse, 124 Bull Street, Room 430, Savannah, GA 31401.
Brown County, Illinois and Incorporated Areas Docket No.: FEMA–B–1707	
Unincorporated Areas of Brown County	Brown County Courthouse, 200 West Court Street, Mount Sterling, IL 62353.

Community	Community map repository address
Pike County, Illinois and Incorporated Areas Docket No.: FEMA–B–1707	
Unincorporated Areas of Pike County	Pike County Government Building, 121 East Washington Street, Pittsfield, IL 62363.
Village of Perry	Perry Village Hall, 210 West Main Street, Perry, IL 62362.
Abbeville County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1708	
Unincorporated Areas of Abbeville County	Abbeville County Administrative Complex, 903 West Greenwood Street, Suite 2100, Abbeville, SC 29620.
Aiken County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1708	
City of North Augusta	Municipal Center, 100 Georgia Avenue, North Augusta, SC 29841.
Unincorporated Areas of Aiken County	Aiken County Planning and Development Department, 1930 University Parkway, Suite 2800, Aiken, SC 29801.

[FR Doc. 2018–09076 Filed 4–27–18; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0003]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application To Extend/Change Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0003 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on February 15 2018, at 83 FR 6874, allowing for a 60-day public comment period. USCIS received 15 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0038 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–539; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–539 is 248,985 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection Supplement A is 54,375 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for biometrics processing

is 373,477 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 962,124 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $48,896,120.

Dated: April 24, 2018.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–09013 Filed 4–27–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N032; FF08ESMF00–FXES11140800000–189]

Final Environmental Impact Statement, Final Habitat Conservation Plan; Yolo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final environmental impact statement and final habitat conservation plan.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a joint final environmental impact statement and final environmental impact report (final EIS/EIR) under the National Environmental Policy Act of 1967, as amended. We also announce the availability of the final habitat conservation plan (HCP) and California natural community conservation plan. These documents were prepared in support of a permit application submitted to us under the Endangered Species Act of 1973, as amended. We will use these documents to inform our decision regarding issuance of the permit.

DATES: A record of decision will be signed no sooner than 30 days after the publication of this notice of availability in the **Federal Register**.

ADDRESSES: Electronic copies of the HCP and final EIS/EIR are available at *http://www.fws.gov/sacramento.* Copies of these documents are also available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, W 2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Address any questions to Mike Thomas, Chief, Conservation Planning Division, Sacramento Fish and Wildlife Office, (916) 414–6600, *mike_thomas@fws.gov;* or Eric Tattersall, Assistant Field Supervisor, (916) 414–6600, *eric_tattersall@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The County of Yolo; the Cities of Davis, West Sacramento, Winters, and Woodland; and the Yolo Habitat Conservancy (collectively, the applicants) have applied for a 50-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants prepared the final Yolo Habitat Conservation Plan and Natural Community Conservation Plan (HCP) pursuant to section 10(a)(1)(B) of the ESA and the California Natural Community Conservation Planning Act of 2002.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and our Federal regulations (50 CFR part 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. For more information about the Federal habitat conservation plan program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

Proposed Action Alternative

The Service would issue an ITP to the applicants for a period of 50 years for certain covered activities. The applicants have requested an ITP for 12 covered species.

Plan Area

The HCP includes all lands within Yolo County, approximately 653,549 acres, and 1,174 acres in Solano County for a total combined area of 654,723 acres.

Covered Activities

The applicants are requesting incidental take authorization for 12 covered species that could be affected by covered activities identified in the HCP. The HCP covers the following five general categories of covered activities (collectively, Covered Activities):

1. Urban projects and activities, which include general urban development, urban public services, infrastructure, and utilities, and urban projects in rural areas.

2. Rural projects and activities, which include general rural development, rural public services, infrastructure, and utilities, agricultural economic development, aggregate mining, and open space.

3. Public and private operations and maintenance activities.

4. Conservation strategy implementation, which includes habitat restoration, management, and enhancement activities throughout the reserve system.

5. Neighboring landowner agreements.

Covered Species

Twelve species are included in the HCP as Covered Species. They include ESA-listed and non-ESA-listed species.

ESA Threatened

California tiger salamander (Central Valley Distinct Population Segment (DPS)) (*Ambystoma californiense*)
Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*)
Giant garter snake (*Thamnophis gigas*)
Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)

ESA Endangered

Least Bell's vireo (*Vireo bellii pusillus*)
Palmate-bracted bird's beak (*Cordylanthus palmatus*)

Non-ESA-Listed

Western pond turtle (*Actinemys marmorata*)
Swainson's hawk (*Buteo swainsoni*)
White-tailed kite (*Elanus leucurus*)
Western burrowing owl (*Athene cunicularia hypugaea*)
Bank swallow (*Riparia riparia*)
Tricolored blackbird (*Agelaius tricolor*)

National Environmental Policy Act Compliance

The final EIS/EIR was prepared to analyze the impacts of issuing an ITP based on the HCP and to inform the public of the proposed action, alternatives, and associated impacts and to disclose any irreversible commitments of resources. The final EIS/EIR analyzes three alternatives in addition to the proposed action described above. The other alternatives include a no-action (*i.e.,* no ITP) alternative, a reduced take alternative, and a reduced development alternative. The final EIS/EIR includes all comments received on the draft EIS/EIR, draft HCP/NCCP, and responses to those comments.

Public Review

The Service published a notice of intent to prepare a joint environmental impact statement and environmental impact report in the **Federal Register** on October 21, 2011 (76 FR 65527), announcing a 45-day public scoping period, during which the public was invited to provide written comments and attend two public scoping meetings, which were held on November 7, 2011, in West Sacramento, California. The Service published a notice of availability (NOA) of the draft EIS/EIR and draft HCP/NCCP in the **Federal Register** on June 1, 2017 (82 FR 25302). The NOA announced a 90-day public comment period, during which the public was invited to provide written comments and attend two public meetings, which were held on June 27, 2017, and June 29, 2017. In accordance with NEPA, the Environmental Protection Agency (EPA) will announce the final EIS in the **Federal Register**.

Next Steps

Issuance of an ITP is a Federal proposed action subject to compliance with NEPA. We will evaluate the application, associated documents, and the public comments we received to determine whether the requirements of NEPA regulations and section 10(a) of the ESA have been met. If we determine that those requirements are met, we will issue a Record of Decision no sooner than 30 days after the EPA publishes notice of the final EIS in the **Federal Register**. Subsequently, we will issue a permit to the applicant for the incidental take of the Covered Species.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations at 40 CFR 17.22.

Michael Fris,

Assistant Regional Director, U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2018–09019 Filed 4–27–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/ A0A51010.999900 253G]

Proclaiming Certain Lands as Reservation for the Spokane Tribe of the Spokane Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Principal Deputy Assistant Secretary—Indian Affairs, exercising the authority of the Assistant Secretary—Indian Affairs, proclaimed approximately 145 acres, more or less, an addition to the reservation of the Spokane Tribe of the Spokane Reservation on March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. These lands were proclaimed to be part of the reservation for the Spokane Tribe of the Spokane Reservation in Spokane County, Washington.

Spokane Tribe of the Spokane Reservation, 1 Parcel, Willamette Meridian, Spokane County, Washington, Legal Description Containing 145 Acres, More or Less

West Plains Parcel (Tract 102–T–1368)

The Southeast Quarter of Section 22, Township 25 North, Range 41 East, W.M., in Spokane County, Washington EXCEPT that portion conveyed to the State of Washington by deed dated June 19, 1929, recorded under Recording No. 997235 and dated July 25, 1942, recorded under Recording No. 557182A; ALSO except that portion conveyed to Spokane County for Craig Road by deed recorded June 7, 1906, under Recording No. 146192; ALSO except the east 830 feet of the South 497.5 feet of the Southeast Quarter of said Section 22, containing 145 acres, more or less after all exceptions.

The above described lands contain a total of 145 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Dated: March 12, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–08997 Filed 4–27–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/ A0A501010.999900]

Proclaiming Certain Lands as Reservation for the Pueblo of Pojoaque, New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Principal Deputy Assistant Secretary—Indian Affairs, exercising the authority of the Assistant Secretary—Indian Affairs, proclaimed approximately 323.763 acres, more or less, an addition to the reservation of the Pueblo of Pojoaque, New Mexico on March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual. A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be the Pueblo of Pojoaque, New Mexico Reservation for the Pueblo of Pojoaque, New Mexico, Santa Fe County and State of New Mexico.

Pueblo of Pojoaque, New Mexico Reservation for the Pueblo of Pojoaque, New Mexico, One Parcel

New Mexico Principal Meridian, Santa Fe County, New Mexico, Legal Description Containing 323.763 Acres, More or Less

Santa Fe Downs (710–T–126)

A tract of land lying, being and situate within Sections 26 and 27, Township 16 North, Range 8 East, N.M.P.M., Santa Fe County, New Mexico, being more particularly described as follows:

Beginning at the Northeast corner of the herein described tract of land, from which point, the corner common to Sections 22, 23, 26 and 27, Township 16 North, Range 8 East, N.M.P.M., bears North 89 deg. 54′34″ East, 832.50 feet; thence from said point and place of beginning, South 00 deg. 37′41″ East, 471.87 feet; thence South 62 deg. 29′08″ East, 166.31 feet to the beginning of circular non-tangent curve concave to the Southwest (Delta = 27 deg. 44′18″; Radius = 1,966.52 feet; Chord = South 48 deg. 36′59″ East 942.77 feet); thence along said curve, an arc length of 952.04 feet; thence South 34 deg. 43′18″ East, 558.41 feet to the beginning of a circular non-tangent curve concave to the Northeast (Delta = 23 deg. 04′48″; Radius = 1,048.02 feet; Chord = South 46 deg. 15′48″ East—419.32 feet); thence along said curve, an arc length of 422.16 feet; thence South 57 deg. 39′00″ East, 39.40 feet to the beginning of a circular non-tangent circular curve concave to the Southwest (Delta = 10 deg. 22′05″; Radius = 3,646.82 feet; Chord = South 52 deg. 41′23″ East—659.02 feet); thence along said curve, an arc length of 659.92 feet; thence South 47 deg. 51′53″ East, 251.32 feet to the Southeast corner of said Tract, said corner also being a point on the North right-of-way line of Interstate Highway 25 Frontage Road; thence along said right-of-way, South 50 deg. 51′48″ West, 678.64 feet; thence South 50 deg. 53′51″ West, 699.82 feet; thence South 50 deg. 54′15″ West, 1,176.41 feet; thence South 51 deg. 41′57″ West, 1,161.88 feet to the Southwest corner of said tract, said corner also being the point of divergence from said right-of-way line of Interstate Highway 25 Frontage Road; thence North 38 deg. 48′03″ West, 1,199.26 feet; thence South 89 deg. 22′35″ West, 590.28 feet; thence North 00 deg. 15′21″ West, 1,237.00 feet; thence South 89 deg. 23′41″ West, 1,126.03 feet; thence North 00 deg. 12′57″ West, 1,328.60 feet; thence North 89 deg. 03′15″ East, 1,296.20 feet; thence North 00 deg. 15′37″ West, 1,335.46 feet to the Northwest corner of said tract; thence North 89 deg. 54′34″ East, 1,857.64 feet to the point and place of beginning.

Excepting the following described landfill area:

Beginning at the most Northerly corner of the herein described tract of land, from which point, the corner common to Sections 22, 23, 26 and 27, Township 16 North, Range 8 East, N.M.P.M., bears North 58 deg. 24′00″ East, 3,758.16 feet; thence from said point and place of beginning, South 44 deg. 49′47″ East, 370.35 feet to the most Easterly corner of said tract; thence South 46 deg. 15′56″ West, 420.10 feet to the most Southerly corner of said tract; thence North 67 deg. 52′16″ West, 397.46 feet to the most Westerly corner of said tract; thence North 45 deg. 30′42″ East, 575.60 feet to the point and place of beginning.

All as shown on plat of survey by Landmark Surveys as Job No. L–374, dated September 3, 1993 and Field Inspection May 10, 1994, which was filed in the Office of the County Clerk, Santa Fe County, New Mexico on May 13, 1994 in Plat Book 274, page 017, as Document No. 862,670.

The above-described lands contain a total of 323.763 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads and highways, public utilities, railroads, and pipelines or any other valid easements or rights-of-way or reservations of record.

Dated: March 12, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–08996 Filed 4–27–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000. BX0000.18X.LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Official Filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

DATES: Protests must be received by the BLM by May 30, 2018.

ADDRESSES: A copy of the plats may be obtained from the Alaska Public Information Center at the BLM Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513, upon required payment. The plats may be viewed at this location at no cost. Please use this address when filing written protests.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513; 1–907–271–5481; *dhaywood@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

T. 11 N., R. 7 E., accepted January 5, 2018
T. 11 N., R. 8 E., accepted January 5, 2018
T. 11 N., R. 9 E., accepted January 5, 2018
T. 12 N., R. 7 E., accepted January 5, 2018
T. 12 N., R. 8 E., accepted September 11, 2015
T. 12 N., R. 9 E., accepted January 5, 2018
T. 12 N., R. 10 E., accepted September 11, 2015
T. 12 N., R. 11 E., accepted September 11, 2015
T. 12 N., R. 12 E., accepted September 11, 2015
T. 13 N., R. 7 E., accepted January 5, 2018
T. 13 N., R. 8 E., accepted September 11, 2015
T. 13 N., R. 9 E., accepted September 11, 2015
T. 13 N., R. 10 E., accepted January 5, 2018
T. 13 N., R. 10 E., accepted September 11, 2015
T. 13 N., R. 11 E., accepted January 5, 2018
T. 13 N., R. 11 E., accepted September 11, 2015
T. 13 N., R. 11 E., accepted September 22, 2016
T. 14 N., R. 6 E., accepted January 5, 2018
T. 14 N., R. 8 E., accepted September 11, 2015
T. 14 N., R. 9 E., accepted January 5, 2018
T. 14 N., R. 9 E., accepted September 11, 2015
T. 14 N., R. 10 E., accepted September 11, 2015
T. 14 N., R. 11 E., accepted January 5, 2018
T. 14 N., R. 11 E., accepted September 11, 2015
T. 14 N., R. 11 E., accepted September 22, 2016

T. 15 N., R. 7 E., accepted January 5, 2018
T. 15 N., R. 8 E., accepted January 5, 2018
T. 15 N., R. 8 E., accepted September 11, 2015
T. 15 N., R. 8 E., accepted September 22, 2016
T. 15 N., R. 9 E., accepted September 11, 2015
T. 15 N., R. 9 E., accepted September 22, 2016
T. 15 N., R. 10 E., accepted September 11, 2015
T. 15 N., R. 10 E., accepted September 22, 2016
T. 15 N., R. 11 E., accepted January 5, 2018
T. 15 N., R. 11 E., accepted September 11, 2015
T. 15 N., R. 11 E., accepted September 22, 2016
T. 16 N., R. 8 E., accepted September 11, 2015
T. 16 N., R. 8 E., accepted September 22, 2016
T. 16 N., R. 9 E., accepted September 11, 2015
T. 16 N., R. 9 E., accepted September 22, 2016
T. 16 N., R. 10 E., accepted September 11, 2015
T. 17 N., R. 8 E., accepted January 5, 2018
T. 17 N., R. 9 E., accepted September 15, 2015
T. 17 N., R. 10 E., accepted September 15, 2015
T. 18 N., R. 8 E., accepted January 5, 2018

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for Alaska, BLM. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will not be considered. A notice of protest is considered filed on the date it is received by the State Director for Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for Alaska within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat. Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2018–09017 Filed 4–27–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–ACAD–DTS–24916; PX.PD210624B.00.4]

Notice of Availability of the Draft Transportation Plan and Environmental Impact Statement for Acadia National Park, Maine

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Draft Transportation Plan and Environmental Impact Statement (Draft Plan/EIS) for Acadia National Park. The purpose of the Transportation Plan is to determine how best to provide safe and efficient transportation and a variety of high quality experiences to visitors within Acadia National Park while ensuring the protection of park resources and values. The Draft Plan/EIS describes four alternatives for consideration, including a no-action alternative.

DATES: Comments will be accepted for a period of 60 days following publication of the Environmental Protection Agency's (EPA) Notice of Availability of the Draft Plan/EIS in the **Federal Register**. After the EPA Notice of Availability is published, the NPS will schedule public meetings to be held during the comment period. The comment period and dates, times, and locations of these public meetings will be announced through social media and local media outlets, and on the NPS Planning, Environment, and Public Comment (PEPC) website at *http://parkplanning.nps.gov/ACADTransportationPlan,* and Acadia National Park's website at *https://www.nps.gov/acad/index.htm.*

ADDRESSES: The Draft Plan/EIS will be available electronically on the NPS PEPC website at *http://parkplanning.nps.gov/ACADTransportationPlan.* Comments may be submitted electronically through the PEPC website at *http://parkplanning.nps.gov/ACADTransportationPlan.* Comments will also be accepted in hardcopy by mail to: Acadia National Park, Attn: Transportation Plan, P.O. Box 177, Bar Harbor, ME 04609.

FOR FURTHER INFORMATION CONTACT: John Kelly, Management Assistant, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, (207) 288–8703, *John_T_Kelly@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) is preparing a transportation plan for Acadia National Park to determine ways to provide safe and efficient transportation for visitors while ensuring the protection of park resources and values. Transportation issues at Acadia National Park are diverse and complex. Visitors travel to and within the park by private vehicle, tour bus, bicycle, ferry, Island Explorer bus, and other modes. In 2016, park visitation reached a record 3.3 million visitors, which is an increase of 58 percent from 2006.

High volumes of visitors accessing popular visitor destinations during peak times is causing gridlock, visitor conflicts, crowding, emergency response delays, and resource trampling. Concentrated volumes and mixture of traffic, particularly on the Park Loop Road and Cadillac Mountain Road, create critical visitor safety issues, severe crowding and congestion, impacts on the road systems, and challenges to the park's operational efficiency and sustainability. Further, the interdependent relationship between Acadia National Park and diverse gateway communities increases the complexity of managing visitor use and access, especially given the importance of the park to the local economy. The transportation plan will determine ways to improve safety, reduce congestion and crowding, avoid impacts to park resources, and provide visitors with a high-quality experience through a variety of mechanisms such as visitor management strategies, enhancements to alternative transportation services, restrictions on vehicle size, and expanded access to parking.

The Draft Plan/EIS evaluates four alternatives:

Alternative A: No Action—reflects current transportation management direction and serves as a baseline for comparison with the other alternatives. Current management (as outlined in the park's 1992 General Management Plan) would continue with no major changes

from current operations, and changes that did occur would be on an as-needed basis. Management of park visitors would continue to vary seasonally as visitor demand and needs change with many management strategies focusing on the peak season between mid-May and mid-October. Parking would remain available to all users on a first-come, first-served basis and right lane parking on the Park Loop Road would continue to occur. Temporary or permanent closures of roads and parking areas may occur if necessary to address safety and security concerns or to ensure the financial sustainability of the overall transportation system.

Alternative B—would establish a reservation system for parking at five of the primary attractions and trailheads along Park Loop Road during peak times and seasons, and eliminate right lane parking to improve traffic flows. Gates and queuing lanes would be constructed where needed to validate reservations and to control access on some first-come, first-served lots.

Alternative C: Proposed action and preferred alternative—would address transportation and congestion issues by establishing a reservation system for the Ocean Drive corridor, Cadillac Mountain Road, and the Jordan Pond North Lot during peak use season (approximately mid-May to mid-October). During initial implementation of this alternative, all other parking lots in the park would continue to be managed on a first-come, first-served basis; but the alternative includes an adaptive management strategy that directs park managers to monitor traffic and resource conditions elsewhere in the park. If monitoring indicates traffic or resource conditions worsening beyond established thresholds, access to Island Explorer routes entering the park, vehicle access to other parking lots, or vehicle access to the entire Park Loop Road may be added to the reservation systems. Expanded opportunities for parking and associated visitor access to the park (without private vehicles) would be provided via expanded public transit service and improvements at Hulls Cove and the Acadia Gateway Center.

Alternative D—would establish a systemwide approach to manage volume of vehicles on Park Loop Road during the peak use season. Gates and additional entrance stations would be installed at all access points to Park Loop Road and a timed-entry reservation system would be established for vehicle access to Park Loop Road during the peak use season. Once a visitor passes through an entrance station or gate during their reserved entry window, all parking lots on Park Loop Road would be available on a first-come, first-served basis.

Under all of the action alternatives (alternatives B, C, and D), vehicle size limits would be phased in for all commercial and noncommercial vehicles on the Park Loop Road to improve safety and maintain the historic character of the road. Also common to these alternatives, the number of oversize commercial vehicles (vehicles that do not fit within a standard parking space such as a bus) allowed at key locations at one time would be managed to ensure desired conditions are maintained and visitor capacities at the parks primary attractions are not exceeded.

The NPS will accept comments on the Draft Plan/EIS for a period of 60 days following publication of the Environmental Protection Agency's (EPA) Notice of Availability of the Draft Plan/EIS in the **Federal Register**. After the EPA Notice of Availability is published, the NPS will schedule public meetings to be held during the comment period. The comment period and dates, times, and locations of these public meetings will be announced through social media and local media outlets; and on the NPS Planning, Environment, and Public Comment website at *http://parkplanning.nps.gov/ACADTransportationPlan,* and Acadia National Park's website at *https://www.nps.gov/acad/index.htm.*

If you wish to comment, you may submit your comments by any one of several methods. The preferred method of commenting is to enter comments electronically through the PEPC website at *http://parkplanning.nps.gov/ACADTransportationPlan.* Comments will also be accepted in hardcopy by mail to: Acadia National Park, Attn: Transportation Plan, P.O. Box 177, Bar Harbor, ME 04609, or you may hand-deliver hardcopy comments to the park at 20 McFarland Hill Drive, Bar Harbor, ME. Comments will not be accepted in any other format beyond those specified above.

Before including your address, phone number, email address, or other personal identifying information in any comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 13, 2018.

Deborah L. Conway,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. 2018–08998 Filed 4–27–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: This Notice publishes the annual determination of average cost of incarceration for the Fiscal Years (FY) 2016 and 2017. The fee to cover the average cost of incarceration for Federal inmates was $34,704.12 ($94.82 per day) in FY 2016 and $36,299.25 ($99.45 per day) in FY 2017. The average annual cost to confine an inmate in a Residential Re-entry Center was $29,166.54 ($79.69 per day) for FY 2016 and $32,309.80 ($88.52 per day) for FY 2017.

DATES: Applicable Date: April 30, 2018.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St. NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 353–8248.

SUPPLEMENTARY INFORMATION:

Title 28 of the Code of Federal Regulations, part 505, allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. Under § 505.2, this fee is calculated by dividing the number representing Bureau of Prisons (Bureau) facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by the number of days in the fiscal year.

Based on FY 2016 and FY 2017 data, the fee to cover the average cost of incarceration for Federal inmates was $34,704.12 ($94.82 per day) in FY 2016 and $36,299.25 ($99.45 per day) in FY 2017. The average annual cost to confine an inmate in a Residential Re-entry Center was $29,166.54 ($79.69 per day) for FY 2016 and $32,309.80 ($88.52 per day) for FY 2017. (**Note:** There were 366 days in FY 2016 and 365 days in FY 2017.)

Ken Hyle,

General Counsel, Federal Bureau of Prisons.

[FR Doc. 2018–09062 Filed 4–27–18; 8:45 am]

BILLING CODE 4410–05–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–145 and CP2018–208; MC2018–146 and CP2018–209]

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 2, 2018.

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

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

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).:* MC2018–145 and CP2018–208; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 78 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 24, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* May 2, 2018.

2. *Docket No(s).:* MC2018–146 and CP2018–209; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 79 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 24, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* May 2, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–09071 Filed 4–27–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 24, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 78 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–145, CP2018–208.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–09001 Filed 4–27–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 24, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 79 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–146, CP2018–209.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–09002 Filed 4–27–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33079; 812–14521]

BMO Exchange Traded Funds, et al.

April 24, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: BMO Asset Management Corp. (the ''Initial Adviser''), a Delaware corporation that is registered as an investment adviser under the Investment Advisers Act of 1940, BMO Exchange Traded Funds (the ''Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, and BMO Investment Distributors, LLC (the ''Distributor''), a Wisconsin limited liability company that will be a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATE: The application was filed on July 24, 2015 and amended on November 27, 2017, March 30, 2018, and April 17, 2018.

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 May 18, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 111 East Kilbourn Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange-traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation

[1] Applicants request that the order apply to the Initial Fund, and any future series of the Trust and any other open-end management investment company or series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–08989 Filed 4–27–18; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83098; File No. SR–FINRA–2018–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Temporary Exception That Permits Aggregate Reporting for Certain ATS Transactions in U.S. Treasury Securities

April 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6730 (Transaction Reporting) to provide an extension of the temporary exception to permit member alternative trading systems (''ATSs'') and member subscribers to report aggregate trade information to TRACE for certain transactions in U.S. Treasury Securities.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 6730 sets forth a member's trade reporting obligations with regard to transactions in TRACE-Eligible Securities,[3] which beginning on

[3] ''TRACE-Eligible Security'' generally is defined as a debt security that is U.S. dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or (3) a U.S. Treasury Security as defined in paragraph (p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o). *See* Rule 6710(a).

Rule 6710(p) defines a ''U.S. Treasury Security'' as ''a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.'' The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of

July 10, 2017, included U.S. Treasury Securities.[4] Pursuant to Rule 6730, each FINRA member that is a ''Party to a Transaction'' [5] in a TRACE-Eligible Security is obligated to report the transaction to TRACE within the prescribed period of time. Transaction information in U.S. Treasury Securities reported to TRACE currently is not subject to public dissemination.

On June 23, 2017, FINRA filed a proposed rule change to, on a temporary basis, adopt Supplementary Material .06 (Temporary Exception for Aggregate Transaction Reporting of U.S. Treasury Securities Executed in ATS Trading Sessions) to permit members to report trades that occurred in a U.S. Treasury Security executed within discrete ATS trading sessions [6] (sometimes referred to as ''work-up sessions'') [7] on an aggregate, rather than individual, basis (''Aggregation Exception'').[8]

The Aggregation Exception provides relief to members with respect to the number of transactions required to be reported, the price reported, as well as the Time of Execution [9] reported to TRACE. Specifically, the exception provided that ATSs and member subscribers are permitted to report transactions in U.S. Treasury Securities executed within discrete trading sessions by submitting a transaction report reflecting the aggregate amount of a U.S. Treasury Security purchased (sold) to another party during a single trading session at the average price of such transactions, with the Time of Execution communicated by the ATS,[10] irrespective of the number of trades in the trading session. The Aggregation Exception was intended to provide members with additional time to complete the systems changes necessary to accurately report each individual transaction in a U.S. Treasury Security in the trading session as required by Rule 6730.[11] Once the temporary exception sunsets, member ATSs and member subscribers are required to comply with Rule 6730 by separately reporting each individual trade that occurs during a trading session as well as the actual time and price at which each of these individual trades is executed.

FINRA understands from discussions with multiple member ATSs that are active in the market for U.S. Treasury Securities that the systems changes necessary to comply with Rule 6730 will require substantial development and testing to complete and that, further, the systems changes required by subscriber members also are significant and cannot be completed by July 10, 2018. While we understand that member ATSs have begun the development work necessary to report individual execution information, additional time is necessary, including to develop an additional data feed to deliver execution level information to subscribers and vendors. We also understand that member subscribers require additional time to update their systems to consume the new execution information to be provided by the ATSs and to systematically incorporate this information in their TRACE reporting to FINRA. FINRA believes it is important that both member ATSs and member subscribers perform the programming and testing necessary to accurately and consistently report individual executions and the time of execution to TRACE to avoid inconsistencies in the audit trail. Thus, FINRA is proposing a nine-month extension of the temporary exception, until April 12, 2019. As a condition to the exception, a member ATS availing itself of this exception would continue to be required to provide individual transaction information for each trade in a U.S. Treasury Security occurring in a trading session to FINRA upon request. In addition, FINRA expects that necessary testing of new required functionality will commence well in advance of the extended deadline of April 12, 2019, but at a minimum, no later than January 12, 2019.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be July 10, 2018 and it will sunset on April 12, 2019, which FINRA believes will provide members with the additional time required to complete necessary systems changes to comply with Rule 6730 and result in a more accurate and complete TRACE audit trail for U.S. Treasury Securities.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Based on discussions with multiple member ATSs, FINRA believes that additional time is necessary to permit members to program systems to comply with Rule 6730. FINRA believes it is appropriate to provide the proposed relief in recognition of the fact that impacted members are unable to implement necessary changes by the July 10, 2018. FINRA believes the proposal strikes an appropriate balance in that FINRA will continue to receive transaction information for purchases and sales that occur as part of an ATS trading session, albeit aggregated. In addition, FINRA notes that transparency will not be impacted by the proposed temporary relief because transaction information in U.S. Treasury Securities currently is not subject to public dissemination.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change should benefit members whose trades are executed on member ATSs as part of a

Securities (''STRIPS'') program operated by the U.S. Department of Treasury. *See* Rule 6710(p).

[4] *See* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR–FINRA–2016–027). *See also Regulatory Notice* 16–39 (October 2016).

[5] *See* Rule 6710(e).

[6] FINRA understands that ATSs that permit subscribers to trade U.S. Treasury Securities on their platforms may permit subscribers to initiate a ''trading session,'' which is a discrete or timed order-matching event during which one or more additional subscribers can interact with the original order on the opposite side of the market or add to the initial order on the same side of the market. Although it is possible that some trading sessions involve a single transaction between two counterparties like a typical trade, FINRA understands that most trading sessions include multiple participants on one or both sides of the market during the time period the trading session is open.

[7] Different members use varying nomenclature to describe trading sessions. For example, one member ATS refers to these sessions as ''workups'' or ''workup sessions.'' In addition, the length of time a session remains open and other characteristics of how a session is structured may change from member to member. As used in the proposed rule change, the term ''trading session'' is meant to capture all variations of such types of sessions that member ATSs may use.

[8] *See* Securities Exchange Act Release No. 81018 (June 26, 2017), 82 FR 29956 (June 30, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2017–023) (''Original Filing'').

[9] Under Rule 6710(d), the ''Time of Execution'' for a transaction in any TRACE-Eligible Security means ''the time when the Parties to a Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.''

[10] FINRA notes that, even where aggregation is not necessary because only the ATS and two subscribers ultimately participated in a trading session resulting in a single cross, the proposed rule change permits members the flexibility to report a Time of Execution that is communicated by the ATS to each party. Thus, even where the trading session involves only one cross, member TRACE reports may reflect a Time of Execution that is, for example, the beginning of the trading session or the end of the trading session.

[11] *See* Original Filing.

[12] 15 U.S.C. 78*o*–3(b)(6).

trading session, as it provides members with additional time to build or upgrade systems to enable reporting of individual transactions in the trading session. While the proposed rule change will temporarily lessen the requirements on ATSs and their subscribers as compared to other market participants, FINRA believes the proposed rule change is appropriate to allow sufficient time to make the technological changes necessary to comply with the rule and such accommodation will be limited in duration. Moreover, FINRA retains the right to require a member ATS availing itself of this exception to provide individual transaction information for each trade in a U.S. Treasury Security occurring in a trading session upon request.

The proposed temporary relief is not expected to undermine the potential benefits of Rule 6730, as the transaction information reflecting the aggregate size and average price of such transactions should still assist the regulators to conduct monitoring and surveillance of the U.S. Treasury Securities markets, in order to detect potential disruptive trading practices and risks to market stability.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2018–014 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–FINRA–2018–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–014 and should be submitted on or before May 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–08995 Filed 4–27–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before June 29, 2018.

ADDRESSES: Send all comments to Gina Beyer, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gina Beyer, Program Analyst, Disaster Assistance, *gina.beyer@sba.gov* 202–205–6458, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration Form 700 provides a record of interviews conducted by SBA personnel with small business owners, homeowners and renters (disaster victims) who seek financial assistance to help in the recovery from physical or economic disasters. The basic information collected helps the Agency to make preliminary eligibility assessment.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of

automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Disaster Home/Business Loan Inquiry Record.

Description of Respondents: Disaster Recovery Victims.

Form Number: SBA Form 700.

Total Estimated Annual Responses: 2,988.

Total Estimated Annual Hour Burden: 747.

Curtis Rich,

Management Analyst.

[FR Doc. 2018–09022 Filed 4–27–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10400]

30-Day Notice of Proposed Information Collection: Grant Request Automated Submissions Program (GRASP)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to May 30, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Thomas Shearer, Office of Overseas Schools, U.S. Department of State, Room H328, 2301 C Street NW, Washington, DC 20522–0132, who may be reached on 202–261–8201 or at *ShearеTP@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Grant Request Automated Submissions Program (GRASP).
- *OMB Control Number:* 1405–0036.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/OS.
- *Form Numbers:* DS–0573, DS–0574, DS–0575, and DS–0576.
- *Respondents:* Recipients of grants.
- *Estimated Number of Respondents:* 192.
- *Estimated Number of Responses:* 192.
- *Average Time per Response:* 90 minutes.
- *Total Estimated Burden Time:* 288 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In accordance with the Consolidated Overseas Schools Program as outlined in 2 FAM 610, the Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered enables A/OPR/OS to advise the Department and other foreign affairs agencies regarding current and constantly changing conditions, and enables A/OPR/OS to make judgments regarding assistance to school or the improvement of educational opportunities.

The legal requirements that authorize the function of A/OPR/OS and thereby authorize the collection of information are the Foreign Assistance Act of 1961 (as amended), and the Mutual Educational and Cultural Affairs Act of 1961 (as amended), and the Department of State Basic Authorities Act of 1956, as amended by the Foreign Service Act of 1980, Public Law 96–465.

Methodology

Information is collected via electronic media.

Janet M. Freer,

Office Director, Office of Directives Management, Department of State.

[FR Doc. 2018–09061 Filed 4–27–18; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 10394]

30-Day Notice of Proposed Information Collection: Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area, 1405–0181

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to May 30, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Peter Ganser, Office of Ocean and Polar Affairs, Room 2665, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, 2201 C Street NW, Washington, DC 20520. He may be reached on 202.647.0237 or at *GanserPJ@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area.
- *OMB Control Number:* 1405–0181.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs (OES/OPA).
- *Form Number:* DS–4131.
- *Respondents:* Operators of Antarctic expeditions organized in or proceeding from the United States.
- *Estimated Number of Respondents:* 25.
- *Estimated Number of Responses:* 25.
- *Average Time per Response:* 10.5 hours.
- *Total Estimated Burden Time:* 260 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Information solicited on the Advance Notification Form (DS–4131) provides the U.S. Government with information on tourist and other non-governmental expeditions to the Antarctic Treaty area. The U.S. Government needs this information to comply with Article VII(5)(a) of the Antarctic Treaty and associated documents.

Methodology

Information will be submitted by U.S. organizers of tourist and other non-governmental expeditions to Antarctica. Copies should be submitted via email, although signed originals are also valid.

Evan T Bloom,

Director, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 2018–09023 Filed 4–27–18; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–2127–0008]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on 03/19/2018. No comments were received.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Randolph R. Reid, Office of Defects Investigation (NEF–100) 202–366–4383, National Highway Traffic Safety Administration, W48–311, Department of Transportation, 1200 New Jersey Avenue SE, West Building W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaints.

OMB Control Number: 2127–0008.

Type of Request: Renewal of current information collection.

Summary: The purpose of this collection provides a benefit to NHTSA's Office of Defects Investigation (ODI). Consumer vehicle safety complaints submitted to ODI are analyzed to determine if a defect trend exists that may require an investigation or the initiation of a recall. An ODI investigator may respond to a consumer submitting a complaint if they require more information. Complaints are collected daily through NHTSA's Vehicle Safety Hotline, *www.nhtsa.gov* website, or through correspondence. The complaints contain a consumer's allegation of a safety defect that they experienced with their vehicle or vehicle equipment, including injuries, crashes, property damage, and death. All complaints are converted to a Vehicle Owner Questionnaire (VOQ) format and reviewed by ODI investigation/engineer staff. ODI staff determines if the collection of complaints/VOQs describing an unreasonable safety risk in a specific make, model and model year of a vehicle or vehicle equipment warrants further action by the agency.

Abstract: Chapter 301 of title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicles and motor vehicle equipment to conduct owner notification and remedy, *i.e.,* a recall campaign, when it has been determined that a safety defect exists in the performance, construction, components, or materials in motor vehicles and motor vehicle equipment. To make this determination, the National Highway Traffic Safety Administration (NHTSA) solicits information from vehicle owners which is used to identify and evaluate possible safety-related defects and provide the necessary evidence of the existence of such a defect. Under the Authority of chapter 301 of Title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicle and motor vehicle equipment which do not comply with the applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety to notify each owner that their vehicle contains a safety defect or noncompliance. Also, the manufacturer of each such motor vehicle item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or noncompliance to be remedied without charge. In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer shall

cause the vehicle remedied by whichever of the following means he elects: (1) By repairing such vehicle; (2) by replacing such motor vehicle without charge; or (3) by refunding the purchase price less depreciation. To ensure these objectives are being met, NHTSA audits recalls conducted by manufacturer. These audits are performed on a randomly selected number of vehicle owners for verification and validation purposes.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 70,000.

Frequency: Daily.

Number of Responses: 69,181.

Estimated Total Annual Burden Hours: 17,295 Hours.

Estimated Total Annual Burden Cost: $242,134.00.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Randolph R. Reid,

Chief, Correspondence Research Division, Office of Defects Investigation.

[FR Doc. 2018–09045 Filed 4–27–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 the Tip Rate Determination Agreement (Gaming Industry).

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to LaNita Van Dyke at (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545–1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code Section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 710.

Estimated Time per Respondent: 14 hours, 44 minutes.

Estimated Total Annual Burden Hours: 10,467.

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: April 20, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–09027 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION: Requests for additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 317–5745, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

1. *Title:* Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849 and Schedule 1, Schedule 2, Schedule 3, Schedule 5, Schedule 6, Schedule 8.

Abstract: The regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit or interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no significant changes to the form previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of responses: 111,147.

Estimated Time per Response: 8 hours and 31 minutes.

Estimated Total Annual Burden Hours: 946,827.

2. *Title:* Underpayment of Estimated Tax by Individuals, Estates, and Trusts (Form 2210), and Underpayment of Estimated Tax by Farmers and Fishermen (Form 2210–F).

OMB Number: 1545–0140.

Form Number: 2210 and 2210–F.

Abstract: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. Form 2210 is used by individuals, estates, and trusts and Form 2210–F is used by farmers and fisherman to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether taxpayers are subject to the penalty, and to verify the penalty amount.

Current Actions: There will be a reduction in the number of respondents previously approved by OMB.

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 599,999.

Estimated Time per Respondent: 4 hrs.

Estimated Total Annual Burden Hours: 2,405,663.

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 our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information.

Approved: April 23, 2018.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–09029 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8835

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 Form 8835, Renewable Electricity Production Credit.

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Renewable Electricity Production Credit.

OMB Number: 1545–1362.

Form Number: Form 8835.

Abstract: Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. possessions from qualified energy resources. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 477.

Estimated Time per Respondent: 18 hrs. 26 minutes.

Estimated Total Annual Burden Hours: 8,720.

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: April 20, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–09026 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3468

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 Form 3468, Investment Credit.

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Investment Credit.

OMB Number: 1545–0155.

Abstract: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit.

Estimated Number of Responses: 15,345.

Estimated Time per Response: 34 hours, 7 minutes.

Estimated Total Annual Burden Hours: 523,418.

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: April 20, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–09024 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 8352 and TD 8531

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

OMB Number: 1545–1120.

Abstract: (TD 8352) These regulations require reporting by a corporation after it undergoes an ''ownership change'' under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (TD 8531) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizatons.

Estimated Number of Responses: 75,150.

Estimated Time per Response: 2 hours, 56 minutes.

Estimated Total Annual Burden Hours: 220,575.

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: April 20, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–09025 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 the assumptions of partner liabilities.

DATES: Written comments should be received on or before June 29, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to LaNita Van Dyke at (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Assumptions of Partner Liabilities.

OMB Number: 1545–1843.

Regulation Project Number: TD 9207 (Final & Temp), REG–106736–00 (NPRM).

Abstract: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

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: April 20, 2018.

Laurie Brimmer,

Senior Tax Anayst.

[FR Doc. 2018–09028 Filed 4–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Meeting of the Advisory Committee on Cemeteries and Memorials

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on May 15–May 16, 2018. The meeting sessions will take place at the Veterans of Foreign Wars Memorial Building, 200 Maryland Avenue NE, Washington, DC 20002. Sessions are open to the public, except when the Committee is conducting tours of VA facilities, participating in off-site events, participating in workgroup sessions, and conducting official Administrative business.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make

recommendations to the Secretary regarding such activities.

On the morning of Tuesday, May 15, 2018, the Committee will convene with an open session at the Veterans of Foreign Wars, Memorial Building, 200 Maryland Avenue NE, Washington, DC 20002 from 8:30 a.m. to 4:00 p.m. eastern time. The agenda will include Ethics refresher training, introductions of new member appointments, and status updates on NCA's Long Range Plan, status updates from Ex-Officios, and the divesture of military cemeteries.

On May 16, 2018, the meeting will convene an open session at the Veterans of Foreign Wars Memorial Building, 200 Maryland Avenue NE, Washington, DC 20002 from 8:30 a.m.–4:00 p.m. During the morning session, the agenda will include status updates on the 2017 Recommendation for Digital Memorialization and the National Cemetery Scheduling Office. The Committee will also conduct a tour of the Congressional Cemetery, which will be closed to the Public. During the afternoon session, the agenda will include status updates on the remaining 2017 Recommendations, state and Tribal Veterans Cemeteries; and discussions on any new charges and next steps.

Any member of the public wishing to attend the meeting should contact Ms. Christine Hamilton, Designated Federal Officer, at (202) 461–5681. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *Christine.hamilton1@va.gov* or mailed to the National Cemetery Administration (40A1), 810 Vermont Avenue NW, Room 400, Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: April 24, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–08980 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0788]

Agency Information Collection Activity: Description of Materials

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 29, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0788'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Description of Materials.

OMB Control Number: 2900–0788.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1852 is completed by builders in Specially Adapted Housing (SAH) projects involving construction as authorized under Title 38, U.S.C., section 2101 (a), section 2101 (b), and the Temporary Residence Adaptations (TRA) grant under Title 38, U.S.C., section 2102A. This form is also completed by builders who propose to construct homes to be purchased by veterans using their VA home loan benefit as granted in Title 38 U.S.C., section 3710(a)(1). SAH field staff review the data furnished on the form for completeness and it is essential to determine the acceptability of the construction materials to be used. In cases of new home construction, a technically qualified individual, not VA staff, is required to review the list of materials and certify they meet or exceed general residential construction material requirements, as specified by the International Residential Code and residential building codes adopted by local building authorities, and are in substantial conformity with VA Minimum Property requirements.

Affected Public: Private Sector.

Estimated Annual Burden: 9,251 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 18,501 per year.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09053 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will meet from 8 a.m. to 5 p.m. on the dates indicated below (unless otherwise listed):

Subcommittee	Date	Location
Oncology-C	May 16–17, 2018	20 F Conference Center.
Nephrology	May 17, 2018	Hilton Garden Inn.
Hematology	May 18, 2018	20 F Conference Center.
Oncology-A/D	May 18, 2018	20 F Conference Center.
Cellular & Molecular Medicine	May 21, 2018	20 F Conference Center.
Endocrinology-B	May 21, 2018	20 F Conference Center.
Oncology-B	May 21, 2018	20 F Conference Center.
Neurobiology-C	May 22, 2018	20 F Conference Center.
Infectious Diseases-B	May 23, 2018	Training Development Center.
Surgery	May 23, 2018	20 F Conference Center.
Cardiovascular Studies-A	May 24, 2018	20 F Conference Center.
Infectious Diseases-A	May 24, 2018	20 F Conference Center.
Immunology & Dermatology-A	May 30, 2018	20 F Conference Center.
Neurobiology-B	May 30, 2018	20 F Conference Center.
Oncology-E	May 30, 2018	20 F Conference Center.
Gulf War Research	May 31, 2018	*VA Central Office.
Pulmonary Medicine	May 31, 2018	20 F Conference Center.
Neurobiology-R	May 31, 2018	*VA Central Office.
Endocrinology-A	June 1, 2018	20 F Conference Center.
Neurobiology-A	June 1, 2018	20 F Conference Center.
Neurobiology-E	June 1, 2018	20 F Conference Center.
Gastroenterology	June 5, 2018	20 F Conference Center.
Special Emphasis Panel on Million Veteran Prog Proj	June 5, 2018	*VA Central Office.
Mental Health & Behavioral Sciences-A	June 6, 2018	20 F Conference Center.
Neurobiology-F	June 6, 2018	*VA Central Office.
Cardiovascular Studies-B	June 7, 2018	20 F Conference Center.
Epidemiology	June 7, 2018	*VA Central Office.
Mental Health & Behavioral Sciences-B	June 7, 2018	20 F Conference Center.
Neurobiology-D	June 8, 2018	20 F Conference Center.
Eligibility	July 16, 2018	20 F Conference Center.

The addresses of the meeting sites are:
20 F Conference Center, 20 F Street NW, Washington, DC.
Hilton Garden Hill, 1225 First Street NE, Washington, DC.
Training Development Center, 400 Maryland Avenue SW, Washington, DC.
VA Central Office, 1100 First Street NE, Suite 600, Washington, DC.
*Teleconference.

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review evaluation. Proposals submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research.

These subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals, which involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c) (6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Holly Krull, Ph.D., Manager, Merit Review Program (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 632–8522 or email at *holly.krull@va.gov.*

Dated: April 24, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–08983 Filed 4–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0718]

Agency Information Collection Activity Under OMB Review: Yellow Ribbon Agreement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0718'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor, Department Clearance Officer—OI&T (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC

20420, (202) 461–5870 or email *Cynthia.harvey.pryor@va.gov.* Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3317.

Title: Yellow Ribbon Agreement (VA Form 22–0839).

OMB Control Number: 2900–0178.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–0839 will be used to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (*i.e.,* undergraduate, graduate, doctoral) or sub-element (*i.e.,* college or professional school).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 26 on February 7, 2018 page 5514.

Affected Public: Institutions of Higher Learning.

Estimated Annual Burden: 47,208 hours.

Estimated Average Burden per Respondent: 14 hours.

Frequency of Response: Once Annually.

Estimated Number of Respondents: 3,372.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09054 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Agency Information Collection Activity Under OMB Review: Application for Reimbursement of Licensing or Certification Test Fees

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs , 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *Cynthia.Haryey-Pryor@va.gov.*

Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Title V of Public Law 110–252; 44 U.S.C. 3501–3521.

Title: Application for Reimbursement of Licensing or Certification Test Fees.

OMB Control Number: 2900–0695.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 36 on February 22, 2018, pages 7849 and 7850.

Affected Public: Individuals or Households.

Estimate: Annual Burden: 660 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,641.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09050 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Agency Information Collection Activity Under OMB Review: Report of General Information, Report of First Notice of Death, Report of Nursing Home or Assisted Living Information, Report of Defense Finance and Accounting Service (DFAS), Report of Non-Receipt of Payment, Report of Incarceration, Report of Month of Death

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0734'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0734'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 CFR 3.217.

Title: VA Form 27–0820, Report of General Information, VA Form 27–0820a, Report of First Notice of Death, VA Form 27–0820b, Report of Nursing Home or Assisted Living Information, VA Form 27–0820c, Report of Defense Finance and Accounting Service (DFAS), VA Form 27–0820d, Report of Non-Receipt of Payment, VA Form 27–0820e, Report of Incarceration, VA Form 27–0820f, Report of Month of Death.

OMB Control Number: 2900–0734.

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Individuals.

Estimated Annual Burden: 35,501.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2018–09056 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0085]

Agency Information Collection Activity: Appeal to the Board of Veterans' Appeals

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 29, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Sue Hamlin, BVA, (01C2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *sue.hamlin@va.gov.* Please refer to ''OMB Control No. 2900–0085'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 632–5100.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506 of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 115–55; 38 U.S.C. 5104B, 5108, 5701, 5901, 7103, 7104, 7105, 7107.

Title:

- Appeal to the Board of Veterans' Appeals, VA Form 9
- Services Withdrawal by Representative
- Requests for Change to Hearing Date
- Motions for Reconsideration

OMB Control Number: 2900–0085.

Type of Review: Extension of a currently approved collection.

Abstract: Appellate review of the denial of VA benefits may only be completed by filing a VA Form 9, ''Appeal to Board of Veterans' Appeals.'' 38 U.S.C. 7105(a) and (d)(3). Additionally, the proposed information collections allow for withdrawal of services by a representative, requests for changes in hearing dates and methods under 38 U.S.C. 7107, and motions for reconsideration pursuant to 38 U.S.C. 7103(a).

Affected Public: Individuals and households.

Estimated Annual Burden: 59,770 hours.

Estimated Average Burden per Respondent: 61.196 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 58,602.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09051 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (PSTAP) Assessment Survey

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 112–56, § 221–225, 125 Stat. 715–718.

Title: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (PSTAP) Assessment Survey.

OMB Control Number: 2900–NEW.

Type of Review: New Collection.

Abstract: The PSTAP Assessment Survey will be used by VA to assess how the TAP training for Transitioning Servicemembers (TSMs) prepares Veterans for civilian life. This new information collection request (ICR) will be conducted once per year and is designed as a longitudinal survey. In the first year of data collection, the survey will be fielded to all Veterans who meet the criteria at the time of fielding of having separated from the military at six months, one year, and three years prior to the date that surveys (first mailing will solicit electronic responses) will be mailed. Civilian life readiness will measure domains of a TSM's life including employment, entrepreneurship, mental/physical health, social relationships, financial situation, and housing. In addition, the survey will assess if TSMs understand and utilize their available VA benefits, and which TAP curriculum modules (tracks) are the most and least useful. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 34 on February 20, 2018, page 7300.

Affected Public: Individuals.

Estimated Annual Burden: 4,210.

Estimated Average Burden per Respondent: 18.5 minutes.

Frequency of Response: Annual.

Esimated Number of Respondents: 13,655.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09055 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0629]

Agency Information Collection Activity Under OMB Review: Application for Extended Care Services

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0629'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0629'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1705, 1710B, 1722A, 1729.

Title: Application for Extended Care Services.

OMB Control Number: 2900–0629.

Type of Review: Renewal of a currently approved collection.

Abstract: Title 38 U.S.C. Chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care and nursing home care to eligible Veterans. Title 38 U.S.C. 1705 requires VA to design, establish and operate a system of annual patient enrollment in accordance with a series of stipulated priorities. A consequence of this is that many groups of Veterans who are in a lower priority group (WWI Veterans, Veterans with disabilities rated as 0% service-connected seeking treatment for other than their service-connected conditions, Veterans exposed to a toxic substance, radiation, or environmental hazard and nonservice-connected Veterans) may request that they be allowed to be income tested in order to gain a higher priority. Title 38 U.S.C. 1722 establishes eligibility assessment procedures for cost-free VA medical care, based on income levels, which will determine whether nonservice-connected and 0% service-connected non-compensable Veterans are able to defray the necessary expenses of care for nonservice-connected conditions. Title 38 U.S.C. 1722A establishes the eligibility assessment procedures, based on income levels, for determining Veterans' eligibility for cost-free medications and Title 38 U.S.C. 1710B defines the procedures for establishing eligibility for cost-free Extended Care benefits. Title 38 U.S.C. 1729 authorizes VA to recover from Veterans' health insurance carriers the cost of care furnished for their nonservice-connected conditions.

VA Form 10–10EC, Application for Extended Care Services, is used to collect financial information necessary to determine a Veteran's copayment obligation for extended care services, also known as long term care (LTC).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 55490 on November 21, 2017, pages 55490–55491.

Affected Public: Individuals and households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,000.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–09052 Filed 4–27–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Monday,
No. 83 April 30, 2018

Part II

Department of Justice

Drug Enforcement Administration

Garrett Howard Smith, M.D.; Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–25]

Garrett Howard Smith, M.D.; Decision and Order

On June 13, 2016, the Deputy Assistant Administrator, of the then Office of Diversion Control, issued an Order to Show Cause to Garrett Howard Smith, M.D. (hereinafter, Respondent), of Southfield, Michigan. ALJ Ex. 1, at 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration, the denial of any pending applications to renew or modify his registration, and the denial of any applications for any other registration, on the ground that his ''registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(4) & 823(f)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered as a practitioner in schedules II through V, pursuant to Certificate of Registration No. FS2592005, at the registered address of 29193 Northwestern Highway, Suite 571, Southfield, Michigan. *Id.* The Order also alleged that Respondent's ''registration expires by its terms on February 28, 2017.'' *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that Respondent ''failed to comply with Federal and state laws relating to the prescribing of controlled substances by issuing purported 'prescriptions' outside the usual course of professional practice or for other than a legitimate medical purpose.'' *Id.* at 2 (citing 21 U.S.C. 841(a), 21 CFR 1306.04, Mich. Comp. Laws §§ 333.7333(1), (3), & (4), 333.7405(1)(a)). The Show Cause Order then alleged that in three instances, Respondent unlawfully prescribed controlled substances to two undercover investigators (hereinafter, BCI 1 and BCI 2) for Blue Cross/Blue Shield of Michigan. *Id.* at 2–3.

As to the first such instance, the Show Cause Order alleged that on February 19, 2015, Respondent prescribed to BCI 1, 65 dosage units of Norco 7.5/325 mg (hydrocodone), a schedule II controlled substance, as well as 60 Xanax .5 mg (alprazolam) and 30 Soma 350 mg (carisoprodol), the latter two drugs being schedule IV controlled substances. *Id.* at 2. The Show Cause Order also alleged that each of the prescriptions did not include information required under 21 CFR 1306.05(a) and (f), as they did not contain the patient's address. *Id.*

As to the second instance, the Show Cause Order alleged that on March 19, 2015, BCI 1 returned to Respondent's office ''for a follow-up visit'' and that Respondent again provided him with prescriptions for 65 dosage units of Norco 7.5/325 mg, 60 Xanax .5 mg, and 30 Soma 350 mg. *Id.* at 2–3. The Order again alleged that each of the prescriptions did not include information required under 21 CFR 1306.05(a) and (f), as they did not contain the patient's address. *Id.* at 3.

As to the third instance, the Show Cause Order alleged that on March 19, 2015, BCI 2 ''presented for an office visit at'' Respondent's office and ''asked for refills of . . . prescriptions for Norco and Soma previously issued by another physician at the clinic . . . on February 20, 2015.'' *Id.* at 3. The Order alleged that Respondent issued BCI 2 prescriptions for 60 Norco 5/325 mg and 60 Soma 350 mg. *Id.* The Order again alleged that each prescription did not include information required under 21 CFR 1306.05(a) and (f), as they did not contain the patient's address.[1] *Id.*

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement of position while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 3–4. The Show Cause Order also notified Respondent of his right to submit a corrective action plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 1, 4.

On July 13, 2016, Respondent, through his counsel, requested a hearing on the allegations. ALJ Ex. 2. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ), who conducted pre-hearing procedures. ALJ Ex. 3. Following pre-hearing procedures, the CALJ conducted an evidentiary hearing on November 29–30, 2016 in Detroit, Michigan, after which both parties submitted briefs containing their proposed findings of fact and conclusions of law. Recommended Decision, at 2. Moreover, while the matter was pending the issuance of the Recommended Decision, the Government notified the CALJ that, on December 16, 2016, the Director of the Michigan Department of Licensing and Regulatory Affairs Bureau of Professional Licensing temporarily suspended his medical license thus rendering him without authority to handle controlled substances in the State of Michigan. *Id.* at 86.

On February 8, 2017, the CALJ issued his Recommended Decision. Therein, the CALJ found proved the allegations that all of the prescriptions issued to both undercover investigators ''were issued outside of the usual course of professional practice, for no legitimate medical purpose, and outside the professional standards of a Michigan controlled substance prescriber.'' *Id.* at 80 (Feb. 19, 2015 prescriptions issued to BCI 1); *see also id.* at 82 (Mar. 19, 2015 prescriptions issued to BCI 1); *id.* at 84 (Mar. 19, 2015 prescriptions issued to BCI 2). The CALJ further noted that ''the record evidence of the three undercover visits under Factors 2 and 4 militates powerfully in favor of the revocation sanction sought by the Government.'' *Id.* at 85.

The CALJ also found proved the allegations that Respondent failed to include the patient's addresses on each of the eight prescriptions he issued to the two undercover investigators. *Id.* The CALJ further found that Respondent's failure to include the addresses violated 21 CFR 1306.05(a) and (f) and that these violations ''weigh in some support of a sanction under Public Interest Factor 4.'' *Id.* at 85–86.

Finally, the CALJ found that ''the parties have stipulated that the Respondent's Michigan medical license is currently suspended.'' *Id.* at 90. The CALJ rejected Respondent's claim that his lack of state authority could not be ''properly considered against him in this matter because the allegation was not included in the'' Show Cause Order. *Id.* at 86. The CALJ explained that notwithstanding the lack of notice in the Show Cause Order or the pleadings, ''the Respondent here was put on notice of this essentially legal issue, and has had an opportunity to respond to the allegation that he lacks state authority.'' *Id.* at 88. The CALJ also rejected Respondent's contention that the Director of the Department of Licensing and Regulatory Affairs ''is not 'a competent state authority' '' within the meaning of 21 U.S.C. 824(a)(3) because he '' 'does not have the ability to suspend, revoke, or otherwise discipline a license without a full vote of the Disciplinary Subcommittee,' '' noting that Respondent ''concede[d] that the Director does have authority to summarily suspend'' and that, under agency precedent, the issue is whether he is currently authorized under state law to dispense controlled substances. *Id.* at 89. The CALJ thus found that because ''Respondent does not presently possess the requisite authority to maintain his DEA registration, Agency

[1] The Show Cause Order also made detailed factual allegations as to various acts performed by Respondent and the office staff as well as the statements made by Respondent and the Investigators at each of the visits. ALJ Ex. 1, at 2–3.

precedent ''compels the revocation of'' his registration. *Id.* at 90.

The CALJ also addressed whether Respondent's prescribing of controlled substances supported a sanction. Noting that ''the Government has met its *prima facie* burden of proving that the requirements for revocation or suspension . . . are satisfied,'' the CALJ found that Respondent did not ''offer[ ] an unequivocal acceptance of responsibility,'' that he ''offered excuses for his conduct that smacked more of contrivance than contrition, and lacked any present indication of remedial steps beyond not desiring to practice pain medicine in the future.'' *Id.* at 91. While noting that ''the actual tally of transgressions on the present record is by no means overwhelming,'' and that ''had this record presented a registrant who signaled at least some indication that he had committed serious errors in judgment, a persuasive argument could be made for a sanction short of revocation,'' the CALJ explained that this ''was not the case here.'' *Id.* at 92.

The CALJ then concluded that ''the issue of [specific] deterrence favors revocation of the Respondent's [registration] because he still remains committed to the concept that he acted within the bounds of his responsibilities as a registrant.'' *Id.* The CALJ subsequently observed that:

> [i]t was clear in the undercover recordings that this Respondent was not engaging in a thorough physical examination or asking probing, sincere questions regarding symptoms present in the two undercover investigators that would warrant pain medicine; he was merely exchanging a few pleasantries and going through some meaningless motions prior to doling out the medications that he knew he was giving-and the patients knew they were getting-from the moment they walked into the office. Specific deterrence is best served by revocation here.

Id. at 92–93.

With respect to the Agency's interest in general deterrence, the CALJ concluded that ''[t]o impose a sanction short of revocation on these facts would send a message to the regulated community that the plausible deniability that comes from walking into a practice as a *locum tenens* with no preparation can act as a shield to insulate a practitioner from consequences for failing to execute the responsibilities of a DEA registration in deterring diversion. . . . [A] sanction that falls short of revocation here . . . would communicate to the regulated community that there is no meaningful consequence to handing out powerful medications based on little more than small talk.'' *Id.* at 93.

The CALJ also concluded that Respondent's misconduct ''does not present a picture of a lack of due care borne of a harried physician keeping up with the demands of practice, or an isolated blunder that has its genesis in lack of training; but rather, . . . measured, calculated decisions to issue powerful controlled substances backed up by little more than incomplete charts, vague answers, and casual banter and made in the face of talk of trading drugs and the street value of the medications.'' *Id.* Continuing, the CALJ explained that ''[f]or a DEA registrant, the answer to a deficit of records and questionable patient responses cannot be to prescribe anyway and sort matters out at some future date.'' *Id.* at 93–94. The CALJ thus concluded that Respondent's misconduct ''was sufficiently egregious to merit the sanction of revocation.'' *Id.* The CALJ recommended that Respondent's registration be revoked and that any pending application for renewal be denied. *Id.*

Neither party filed exceptions to the CALJ's Recommended Decision. Thereafter, the CALJ forwarded the record to my Office for Final Agency Action.

Having considered the record in its entirety, I adopt the CALJ's factual findings including his credibility determinations, his conclusions of law, and his recommendation that I revoke Respondent's registration and deny any pending application to renew his registration. I make the following factual findings.

Findings of Fact

Respondent is a medical doctor licensed by the Michigan Board of Medicine. While on December 13, 2016, the Board summarily suspended Respondent's medical license, on February 16, 2017 (eight days after the CALJ issued his Recommended Decision and well before the record was forward to my Office), the Board's Disciplinary Subcommittee and the Board entered into a Consent Order and Stipulation with Respondent.[2] Under the Consent Order, the Board found ''that the allegations of fact contained in the complaint are true and that Respondent has violated section 16221(a) of the Public Health code.'' *Id.* at 2.

As a consequence, the Board placed Respondent on probation for a period of two years from the effective date of the Order. *Id.* As one of the terms of the Consent Order, Respondent agreed that he ''shall not obtain, possess, prescribe, dispense or administer any drug designated as a controlled substance under the Public Health Code or its counterpart in federal law except in a hospital or other institutional setting.'' *Id.* In addition to imposing a variety of additional probationary terms, the Board fined Respondent $7,500. *Id.* at 5. The parties, however, also agreed to the dissolution of the summary suspension. *Id.* at 1.

Respondent also previously held DEA Certificate of Registration No. FS2592005, pursuant to which he was authorized to dispense controlled substances in schedules II through V, at the registered address of 29193 Northwestern Hwy., Suite 571, Southfield, Michigan. R.D. 3 (Stipulation of Fact No. 1). The expiration date of this registration was February 28, 2017. *Id.* According to the registration records of this Agency, of which I also take official notice, Respondent did not submit a renewal application until March 16, 2017, after the expiration date of his registration. I therefore find that Respondent's renewal application was untimely and that his registration expired on February 28, 2017. *See* 21 CFR 1301.36(i). I further find, however, that Respondent's March 16, 2017 application remains pending before the Agency.[3] *See Paul Volkman,* 73 FR 30641, 30644 (2008), *pet. for rev. denied, Volkman* v. *DEA,* 567 F.3d 215, 225 (6th Cir. 2009).

The Investigation of Respondent

This investigation arose out of the investigation of another physician (Dr. Vora), who, the Chief of Police of Gladwin, Michigan suspected was issuing prescriptions that lacked a legitimate medical purpose. Tr. 37. Because the physicians in the town knew local police officers[4] and the officers could not ''do any undercover work,'' an officer with the Gladwin Police Department contacted James

[2] I take official notice of the Consent Order and Stipulation entered by Respondent with the Board on February 16, 2017. *See* 5 U.S.C. 556(e). The parties are entitled to refute the findings based on the Consent Order and Stipulation by filing a properly supported motion for reconsideration within 10 business days of the issuance of this decision. It is further noted that while the CALJ's order directing the parties to ''provide timely updates to this tribunal regarding any developments'' pertaining to the status of Respondent's state license lapsed upon issuance of the Recommended Decision, ALJ Ex. 29, it is perplexing that neither party notified this Office that the summary suspension had been dissolved on February 16, 2017.

[3] The parties are also entitled to refute the findings with respect to Respondent's registration status and application by filing a properly supported motion for reconsideration within 10 business days of the issuance of this decision.

[4] According to the Chief of the Gladwin Police Department, the Department has four full-time officers and six part-time officers. Tr. 21.

Howell, an investigator for Michigan Blue Cross/Blue Shield (hereinafter, BC) who the Chief had met at a state drug diversion conference, as they had ''the tools to do'' undercover work. *Id.* at 21. Mr. Howell (hereinafter, BCI 1 [5]) agreed to assist the Gladwin Police by performing undercover visits to Dr. V's clinic; Jill Kraczon, a second BC Investigator (hereinafter, BCI 2 [6]) also made several visits to the clinic.

BCI 1's Visits

Using the name of James Howard, on November 10, 2014, BCI 1 made his first visit to the clinic. There, he completed an authorization for the release of his records from one Dr. Lindsay, a ''Controlled Substances Management Agreement,'' a Medical History Form (on which he did not check any of the symptoms but did list Xanax as a medication he was currently taking), as well as other forms including one on which he noted that the reason for his visit was ''refills.'' GX 10, at 14, 16–17, 19–20.

At this visit, BCI I saw Dr. Vora. GX 10, at 5–6. Dr. Vora created a visit note which documented BCI 1's chief complaints as including anxiety, back pain, and back stiffness; the note also listed vital signs, a history, a review of systems and various physical examination findings. *Id.* at 5. However, the physical exam section contained no findings as to the Investigator's back. *Id.* Nor were there any findings as to the Investigator's psychiatric condition.

As the treatment plan, Dr. Vora simply noted ''Follow Up'' and ''After 1 month(s).'' *Id.* at 5–6. Although the progress note for this visit does not list any prescriptions, the patient file includes copies of prescriptions issued by Dr. Vora to BCI 1for 60 Norco 7.5 mg and 60 Xanax 0.5 mg which are dated ''11–10–14.'' *Id.* at 21. BCI 1's patient file also includes a copy of a report from the Michigan Automated Prescription System dated ''10/20/2014.'' *Id.* at 23. It shows that James Howard had obtained alprazolam from four different providers, including one in Marquette, one in Detroit, and two with different addresses in Flint; the report also shows that one of the providers from Flint had also prescribed amphetamines to Howard. *Id.*

On December 15, 2014, BCI 1 again saw Dr. Vora, who noted that the former's ''[p]roblem [l]ist'' included both back pain and anxiety (both with an onset date of ''12/15/2014''), as well as generalized anxiety disorder and lumbar paraspinal muscle spasm. *Id.* at 3. In the Review of Systems section of the visit note, Dr. Vora made negative findings [7] except for with respect to ''lower back pain'' and ''endocrinology anxiety.'' *Id.*

In the physical examination section, Dr. Vora documented findings of ''lumbar spine point tenderness,'' ''TTP L/S spine, pain with flexion/extension[,] Negative SLR [straight leg raise], No weakness with Toe/Heel walk b/l).'' *Id.* at 4. Dr. Vora listed diagnoses of generalized anxiety disorder and lumbar paraspinal muscle spasm. *Id.* His treatment plan included an X-Ray of the Investigator's lumbar spine, a recommendation to BCI 1 to ice his back for 20 minutes two to three times per day, and four prescriptions, including for 60 Norco 7.5/325 mg, 60 Xanax .5 mg, and two non-controlled drugs. *Id.*

On January 12, 2015, BCI 1 again saw Dr. Vora. *Id.* at 1. In the Review of Systems section of the visit note, Dr. Vora indicated the existence of musculoskeletal joint pain, muscle pain, lower back pain, back pain, and endocrinology anxiety. *Id.* However, in contrast to the previous visit note, there are no physical exam findings related to the Investigator's back pain. *Id.* at 1–2. Nor are there any findings related to BCI 1's anxiety. *Id.* Although the Treatment Plan section of the visit lists Zithromax Z-Pak as having been prescribed at this visit, it does not list any controlled substances as having been prescribed on this date. *Id.* at 2. Nonetheless, both Norco and Xanax are listed in the visit note under the ''Reconciled Medications'' and the patient file includes two prescriptions that were copied onto the same page: One for 66 Xanax (pill strength unclear) and one for 66 Norco 7.5/325 mg.[8] *Id.* at 10.

On February 19, 2015, BCI 1 returned to the clinic where he finally saw Respondent. After checking in and waiting for two hours, BCI 1 was required to provide a urine sample for drug testing after which he was taken to an exam room where a medical assistant took his blood pressure and told him to wait for Respondent. Tr. 66, 69.

Respondent entered the exam room and after he and BCI 1 exchanged pleasantries, Respondent asked: ''what brings you here? What hurts you?'' to which BCI 1 replied that he had come back for refills'' and had ''been seeing Dr. Vora here.'' GX 3, at 5. Respondent then asked BCI 1 what he was ''getting the medication for?'' *Id.* BCI 1 stated: ''I take Norco for my back and I take Xanax on the weekends,'' prompting Respondent to ask: ''Okay so you have back pain and some anxiety?'' *Id.* BCI 1 replied, ''I guess.'' *Id.*

Respondent asked BCI 1 when his other doctor was ''going to be here,'' to which the latter stated that he didn't know. *Id.* at 5–6. Respondent then asked BCI 1 why he needed a Z-Pak (Zithromax) and if he had had an infection?; BCI 1 answered that he ''didn't get one,'' prompting Respondent to ask: ''You didn't take it-any? Because it says.'' *Id.* at 6. BCI 1 answered that while he ''saw some paperwork for that,'' he ''didn't get it,'' stated that he was ''cool,'' and denied that he was sick. *Id.*

BCI 1 then asked Respondent if he was taking over for Dr. Vora. *Id.* Respondent replied that he did not know, that it was his ''first time'' at the clinic and ''in this area ever,'' that he was from East Lansing,'' and that the Gladwin area was very rural and a lot different. *Id.* at 6–7.

After determining the Investigator's age (44), Respondent asked BCI 1 how long he had had back pain; the latter answered: ''probably ten years. Mostly just stiff.'' *Id.* at 7. Respondent then asked BCI 1 if he got ''any muscle spasms with the pain?'' *Id.* BCI 1 replied: ''I don't know. It[ ] gets like tight . . . so I don't know. I don't know—I don't know what the word is for that. Stiff.'' *Id.*

After a discussion about Respondent's being left-handed, Respondent asked the Investigator: ''[d]o you ever have to walk with a limp because your pain gets so bad?'' *Id.* at 8. BCI 1 replied that ''I strut a little bit. Does that count?'' and added that ''I got a little flavor to my stroll.'' *Id.* Respondent then asked BCI 1 if he had ever fallen, BCI 1 answered in the affirmative, whether he ''had any loss of

[5] Mr. Howell (BCI 1) had previously been employed by the Lincoln Park, Michigan Police Department for twenty-three years, where he did ''all type[s] of police work including uniform patrol, detective work, undercover work, [and] violent crime investigations,'' retiring with the rank of lieutenant. Tr. 58. He testified that he had ''attended a basic drug diversion school'' which ''was put on by the National Association of Drug Diversion Investigators,'' as well as ''over 40 hours of training in other drug diversion seminars.'' *Id.* at 58–59.

[6] Ms. Kraczon (BCI 2) testified that prior to working for BC she had been a police officer with the Lansing Police Department for 16 years and that she had done undercover work for the last three years of her employment with the Department which included ''over prescribing doctor cases.'' Tr. 190. She also testified that she had professional training with the National Association of Drug Diversion Investigators, as well as in-house training with Blue Cross, and had ''done over 100 undercovers at Blue Cross.'' *Id.*

[7] These negative findings included ''Psychiatry depression.'' GX 10, at 3.

[8] While only the full date of the Norco prescription is clear, the year of the Xanax prescription is listed as ''15,'' and both prescriptions were written on Dr. Vora's prescription forms. GX 10, at 10. Respondent was the only other physician seen by the Investigator at this clinic in 2015.

muscle strength?'' to which BCI 1 stated that he was ''just getting older'' and was not ''a young buck,'' followed by his asking Respondent ''are you a back doctor?'' *Id.* Respondent answered that he ''actually [does] procedures'' and ''reads MRI'' and ''CT scans.'' *Id.* at 8–9.

Respondent then asked BCI 1 to stand up, turn around, and ''point to one spot in your back that hurts the most?'' *Id.* BCI 1 pointed to the small of his lower back, about two inches above his tail bone, Tr. 164–65, and stated: ''[m]ostly just stiff. Right there.'' GX 3, at 9. *Id.*

BCI 1 testified that when this occurred he was wearing outdoor winter clothing which he did not take off.[9] Tr. 73. BCI 1 also testified that Respondent did not palpate the area of his back that he pointed to, and that neither he nor Respondent lifted up the clothing that he was wearing. *Id.* at 175.

Respondent asked if the pain ''shot anywhere'' or ''is it just localized?'' GX 3, at 9. BCI 1 stated that ''[i]t's localized.'' *Id.* Respondent then had BCI 1 hold out his arms, and as Respondent held the top of BCI 1's arms, Tr. 166–67, he had BCI 1 push up and then push down. GX 3, at 9. Notably, as he performed these tests, Respondent did not ask BCI 1 if either one caused pain and BCI 1 did not complain that either test caused pain. *Id.; see also* GX 3, Video 5, at 14:48:06–12. Thereafter, Respondent told BCI 1 to have a seat and asked if he smoked or used marijuana; BCI 1 answered ''[n]ope'' to both questions. GX 3, at 9.

Next, Respondent asked BCI 1 if he was a social drinker. *Id.* BCI 1 answered in the affirmative and added: ''That's why I take the Xanax. Because when I do that it keeps me from drinking too much moonshine on the weekends.'' *Id.* BCI 1 then asked Respondent if he ''like[d] moonshine''; Respondent answered in the negative and added that he ''heard its very strong.'' *Id.* BCI 1 agreed and said: ''But, y[ou] know, if I take those Xanax[,] I'm cool with it.'' *Id.*

Respondent asked BCI 1 what he did on the weekends ''[a]round here?'' BCI 1 replied: ''Yeah. I go—I leave. I go to East Lansing with you and kick it at the club. Nah. There's not a lot going on. I like outdoors stuff myself.'' *Id.* at 9–10. Respondent and BCI 1 then discussed a variety of topics including hunting, whether Respondent would be coming to the clinic on a ''steady'' basis, where else Respondent worked, where BCI 1 had lived, and the traffic in the Washington, DC area, where Respondent had done his residency. *Id.* at 10–12.

Respondent told BCI 1 that he was going to prescribe an ''additional medication for [his] muscle spasm[,] Soma,'' prompting the latter to say ''[p]erfect.'' *Id.* at 12. Respondent then asked BCI 1 if he had high blood pressure or diabetes; the latter answered ''No'' to both questions. *Id.*

After a lengthy discussion of the recent Super Bowl, the conversation turned to whether Respondent had any other offices and worked for himself. *Id.* at 12–14. Respondent answered that he worked in East Lansing and that he was ''on a contract'' and ''share[d] in the profits,'' after which he turned to discussing the hassle of getting insurance companies to pay for medication. *Id.* at 14. While BCI 1 said that he had not ''had that problem'' but had ''heard about it,'' Respondent replied that ''[i]ts crazy'' and ''[t]hose guys are making bank.'' *Id.*

Continuing, Respondent added that ''I'd imagine these scripts right here that you are going to get would be like 6 or 7 hundred dollars. You know the pharmaceutical company are [sic] making bank.'' *Id.* BCI 1 commented: ''Big cheese involved in that, ain[']t there?'' *Id.* Respondent answered: ''Right,'' prompting BCI 1 to state: ''Wonder why that is. They're worth a lot of money on the street.'' *Id.* Respondent then explained: ''That's the whole point. They're pure. You know there is nothing cut down about them. So when you're selling them—its like you know—the person buying—legit.'' *Id.*

BCI 1 replied ''Right[,] Yeah,'' and Respondent added: ''Its not cut or anything like that. That's one reason.'' *Id.* at 15. BCI 1 then noted: ''Well, it's a little safer to do it that way. You know what I mean,'' prompting Respondent to say ''Right.'' *Id.*

BCI 1 then told Respondent that ''[a] couple of time I ran out of pills'' and had to ''trade with my neighbor.'' *Id.* Respondent remarked: ''You did? Was it an equal trade?'' to which BCI 1 answered: ''Yeah. It was—like I just asked Dr. Vora for a couple extra. . . . And then I just gave them back to old boy.'' *Id.* Respondent stated ''okay,'' and BCI 1 stated: ''So we're cool. He wrote it for 66. I said I don't think they will fill that[.] [H]e said oh yeah they'll fill it for me. They did. Do they fill odd numbers like that? They did for me.'' *Id.*

Respondent replied: ''Yeah. I mean they can fill it. He probably should have maybe said 65,'' prompting BCI 1 to say ''Oh.'' *Id.* Laughing, Respondent stated: ''66 you know, 65, 70, you know, something like that. But 66 what's that about?'' *Id.* BCI 1 then stated: ''Yeah. Because I can't be paying—buying them on the street. You know what I mean?'' *Id.* Respondent stated ''Right'' and BCI 1 stated: ''that's why I got good—this insurance I got is the whip. . . . I got Blue Cross. I figure I'd use it.'' *Id.* Respondent replied: ''Right. They'll pay for it,'' and BCI 1 stated that he would use the insurance ''while I can.'' *Id.*

Respondent stated ''okay'' and added: ''So what I did is I re-wrote your Xanax, your Norco and your—and Soma.'' *Id.* BCI 1 replied: ''Sweet. Thanks doctor,'' after which Respondent and BCI 1 discussed the timing of his next appointment (''in a month'') and the visit ended. *Id.* at 15–16.

In the progress note for this visit, Respondent wrote in the ''subjective'' section that BCI 1 had ''DDD [degenerative disc disease] for approximately 10 years. Pt does have associated muscle spasm.'' GX 10, at 31. Respondent also noted physical exam findings which included: ''Slight limp that favors RLE [Right Lower Extremity],'' ''Moderate point tenderness to low back that is localized,'' ''Good muscle tone, ''5/5 Muscle Strength,'' ''CN IV—XII intact,'' and ''Oriented x 3.'' *Id.* Respondent noted diagnoses of ''DDD,'' ''Etoh'' or Ethyl Alcohol,'' and ''Anxiety.'' *Id.*

The visit note lists three prescriptions: (1) 65 dosage units of Norco (hydrocodone and acetaminophen) 7.5/325 mg; (2) 60 dosage units of Xanax 0.5 mg; and (3) 30 dosage units of Soma (carisoprodol) 350 mg. *Id.* The Investigator's patient file contains copies of each of these prescriptions. *Id.* at 29–30. Respondent did not include BCI 1's address on the prescriptions. *See id; see also* GX 4, at 1–3.

The patient file also includes the lab report for the urine sample provided by BCI 1 at this visit. *Id.* at 24–25. While the urine sample was not received by the lab until February 23, 2015 and the test results were not certified until the next day, BCI 1 was negative for every drug listed on the result form, including alprazolam and hydrocodone, which had been prescribed to him by Dr. Vora at the previous visit. *Id.* at 24–25; 10.

On March 19, 2015, BCI 1 returned to the clinic and again saw Respondent. Tr. 81. After completing various forms and providing another urine sample, BCI 1 was taken to an exam room. *Id.* at 84.

Upon Respondent's entering the room, he and BCI 1 greeted each other, engaged in a short discussion of the

[9] While the video reflects the presence of an item of clothing which BCI 1 brought with him and which he was not wearing during his visit with Respondent, BCI 1 testified that ''normally,'' he wears multiple layers and that ''[d]uring the exam, I had a hooded sweatshirt and some type of coat [or vest] over it.'' Tr. 174.

NCAA basketball tournament, after which, Respondent asked: ''So how has everything been going with your pain?'' GX 5, at 3–4. BCI 1 replied: ''Great. Yup everything is cool.'' *Id.* at 4. Respondent said ''Ok[,] alright,'' and BCI 1 stated: ''I just pretty much need refills. I am easy. You got a special on old people today it looks like. Problem is I am one of them.'' *Id.*

Respondent directed BCI 1 to ''just walk back and forth for me'' and told him to ''just point to where it hurts in your back.'' *Id.* BCI 1 stated that ''I just got stiffness pretty much like right down there,'' and pointed to a spot about two inches above his tailbone in the middle of his back. Tr. 181. Respondent then asked: ''Does it go to your leg or anything?'' and BCI 1 replied: ''No just like . . . you know.'' GX 5, at 4.

Respondent had BCI 1 hold out his arms and had BCI 1 push up and down. *Id.* Here again, Respondent did not ask BCI 1 if either test caused pain and BCI 1 did not complain that either test caused pain. *Id.* Instead, upon completion of this test, Respondent asked: ''so how would you rate your pain on a scale of 1–10 today?'' *Id.* BCI 1 replied: ''I am good today. I am good today.'' *Id.*

Respondent then told BCI 1 that he was ''going to just refill [his] prescriptions'' to which BCI 1 replied: ''Ok that is perfect. Straight. I am good then.'' *Id.* Respondent stated: ''Yeah you are good.'' *Id.* BCI 1 thanked Respondent and said he would see him in a month, and after Respondent determined that BCI 1 had provided a urine sample, the visit ended. *Id.*

Respondent wrote in the subjective section of the visit note that BCI 1 had ''DDD For approximately 10 yrs'' and that ''Pt has associated muscle spasm [with] lbp'' or lower back pain. *Id.* at 32. In the note's physical exam section, Respondent documented findings which included ''[w]alks [with] a slight limp that Favors RLE,'' ''Moderate point tenderness to low back that is localized,'' ''CN [illegible]—XII intact,'' ''5/5 Muscle Strength,'' ''good muscle tone,'' ''2+ pulses throughout,'' ''2/2 reflexes Full ROM.'' *Id.*

As for his diagnoses, Respondent noted: ''DDD—Lumbar,'' ''Etoh,'' ''Anxiety,'' and ''Muscle Spasm.'' *Id.* Respondent also documented the issuance of prescriptions for 65 dosage units of Norco 7.5/325 mg, 60 Xanax 0.5 mg, and 30 Soma 350 mg. *Id.* While the patient file includes copies of only the Xanax and Soma prescriptions, *see generally* GX 10, the Government submitted a separate exhibit which contains a copy of all three prescriptions issued by Respondent at this visit including the Norco prescription. *See* GX 6, at 1–3. Respondent also failed to include BCI 1's address on these prescriptions. *See id.*

BCI 2's Visit to the Clinic

Using the name Noelle Garcia, the second BC Investigator also made several visits to Dr. Vora's clinic. At her first visit (January 21, 2015), BCI 2 completed various forms including a medical history form on which she did not check any symptoms or conditions but listed Norco, Ambien and Xanax as medications she was currently taking. GX 11, at 10. Her file also includes a Michigan Automated Prescription System report (dated ''1/12/2015''), which shows that Noelle Garcia, whose residence was reported as being in Grand Rapids, had last obtained controlled substance prescriptions eight months earlier on May 13, 2014 from a Nurse Practitioner in Flint. *Id.* at 15. The report also showed that the prescriptions were for 60 hydrocodone/apap 5/325 mg, 60 alprazolam .25 mg, and 30 zolpidem 5 mg. *Id.*

At the visit, BCI 2 saw Dr. Vora, who documented in the visit note that she:

> [p]resents with complaints of chronic back pain, anxiety and inability to sleep through a night. States has been taking Norco, Ambien and Xanax for years. States that her back pain fluctuates and today rates pain 0/10. States has tried physical therapy and states it helped temporarily and would like referral to physical therapy again, has not seen PT in over three years. Denies seeking therapy for anxiety but would like referral to physical therapy again, has not seen PT in over three years. Denies seeking therapy for anxiety but would like referral to speak so something, stating that anxiety stems from ''struggling for change.''

GX 11, at 1. The visit note further lists BCI 2's problems as ''anxiety,'' ''Chronic lumbar pain,'' ''Sleep-wake disorder,'' ''GAD (generalized anxiety disorder),'' ''Chronic pain,'' and ''Sleep disorder,'' and states that BCI 2 ''needs refills on Norco[,] Ambien and Xanax.'' *Id.*

In the visit note, Dr. Vora documented negative findings for every item, including lower back pain. *Id.* Dr. Vora also documented a variety of physical exam findings and made diagnoses of generalized anxiety disorder, chronic pain and sleep disorder. While Dr. Vora prescribed only a seven-day supply of Motrin 800 mg (a non-controlled substance), he made the following additional notes in the ''Treatment Plan'' section of the visit note.

> First, with respect to BCI 2's ''[h]istory of chronic lumbar pain,'' he documented: States in the past was prescribed Norco for pain by a provider in Flint. Has not been prescribed medication in over four months and has been ''borrowing from a friend.'' Referral to Pain Clinic for treatment of chronic pain. Referral to physical therapy. 7 days of 800 mg Motrin prescribed.

Id. at 2. Second, with respect to BCI 2's anxiety, Dr. Vora documented: ''States that in the past was prescribed Xanax by a provider in Flint MI[.] Has not had filled prescription in over four months. States has been borrowing from a friend. Referral to MidMichigan Mental Health for evaluation and recommendation of treatment.'' *Id.*

Two days later, BCI 2 was seen by the Pain Clinic (which shared the building or adjoined Dr. Vora's clinic) and completed additional forms including a Pain Clinic History Questionnaire and a Narcotic Agreement. *Id.* at 23–24 (Pain Hx form); *id.* at 26 (Narcotic Agreement). On this form, BCI 2 indicated that her ''pain problem'' was an old injury and that on a ''0 to 10 pain scale,'' her pain was presently a ''0'' but was ''[u]sually a ''4'' and ranged from ''0–4.'' *Id.* She noted that her pain was decreased by medication and that her current medications, which she listed as Norco 5/325 mg, Ambien 5 mg and Xanax .25 mg were ''very good.'' *Id.* at 23. She also circled numerous medications that she had tried, indicated that she had previously had physical therapy, and that she had not seen ''any neurologist, neurosurgeon, orthopedic surgeons or any other pain physicians.'' *Id.* While she admitted to using alcohol, she denied marijuana use. *Id.* at 24. Notably, BCI 2 did not indicate on the form the location of her pain, how long she had suffered it, nor any activity which increased it. *See id.* at 23.

According to the visit note, BCI 2 was seen by Dr. R., who documented that she complained of ''[p]ain in the lumbar spine.'' *Id.* at 16. Dr. R. noted that BCI 2 ''fell off a horse 10 years ago and since then has had pain in her right lumbar area''; she also noted that ''PT didn't help'' and that ''she has not been considered for spinal interventions or seen by a surgeon.'' *Id.* Dr. R. conducted a review of various symptoms, documenting under ''[m]usculoskeletal'' that BCI 2 had ''[n]o joint pain, redness or swelling'' but had ''[l]umbar back pain.'' *Id.*

Dr. R. also documented that she performed a physical exam. In her findings as to the ''musculoskeletal'' portion, Dr. R. noted ''tenderness in lumbar spine, no pain on ROM [range of motion] of lumbar spine, pinprick intact b/l lower extremities, 4/5 strength b/l lower extremities, [D]TR 2+ lower extremities.'' *Id.* Dr. R. made a diagnosis of ''[l]umbar facet pain.'' *Id.* As for her

plan, Dr. R. listed ''[o]btain updated MRI of lumbar spine,'' ''consider LMBB,'' and issued prescriptions for 60 Norco 5/325 mg, 30 Ambien 5 mg with four refills, and 60 Xanax 0.25 mg, also with four refills. *Id. See also id.* at 28 (copies of each prescription).

On February 20, 2015, BCI 2 returned to the Pain Clinic and again saw Dr. R. In the visit note, Dr. R. documented that ''[p]atient is having good pain control on Norco. Did not get MRI.'' *Id.* at 18; *see also id.* at 29. Under review of systems, Dr. R. documented that ''[a]ll 14 systems within normal limits.'' *Id.* at 18. Dr. R.'s physical exam findings included ''tenderness in lumbar spine, pinprick intact, some pain on ROM of spine[,] 5/5 strength in upper and lower extremities.'' *Id.* Dr. R noted the same diagnosis as before of lumbar facet pain. *Id.* Her plan included having BCI 2 get an MRI of her lumbar spine, ''try[ing] [S]oma this month instead of Norco,'' and ''consider spinal interventions.'' *Id.*

BCI 2's patient file contains copies of two prescriptions issued this date: one for 120 du of Soma 350 mg, the other for five du of Norco 5/325. *Id.* at 30. The file also includes a signed order by Dr. R. for an MRI of BCI 2's lumbar spine; the form lists the date and time of the appointment as ''3/5'' at ''10:30 a.m.'' *Id.* at 31.

BCI 2's patient file also includes a lab report which shows that BCI 2 provided a urine sample at her February 20, 2015 visit. *Id.* at 32. According to the report, the specimen was received by the lab on February 26, 2015 and the results, which were negative for all drugs including those prescribed to her at the previous visit (Norco (hydrocodone) and Xanax (alprazolam)). *Id.* The report further indicates that BCI 2's sample failed validity tests and lists a urine creatinine level (27 mg/dl) below the reference range (37–300 mg/dl). *Id.* at 32–33.

On March 19, 2015, BCI 2 returned to the clinic and saw Respondent. Tr. 191–92. After providing a urine sample, BCI 2 was taken to an exam room, and after a short wait, Respondent entered the room. *Id.* at 194. Respondent and BCI 2 exchanged pleasantries, after which Respondent asked: ''so tell me what's going on?'' GX 7, at 2. BCI 2 stated that she was ''just here for refills,'' prompting Respondent to state: ''Ok. Alright and how are you feeling?'' *Id.* BCI 2 replied: ''I feel great today. It's awesome outside.'' *Id.* Respondent noted that he had ''[g]one outside pretty early this morning'' and that ''it was like barely light out,'' prompting BCI 2 to state that ''[t]hat's too early to start work.'' *Id.*

Respondent then asked BCI 2: ''[t]ell me how you, you been doing?'' *Id.* BCI 2 answered: ''actually I have been doing really good I have no complaints.'' *Id.* Respondent replied: ''Ok well that's what I like to hear. You know, you know that's a good thing.'' *Id.* BCI 2 then noted that there were ''a lot of chairs in this room'' and this ''makes it look like an intervention,'' prompting Respondent to comment: ''Right, Right. One of those, you know surprise interventions. Families about to show up.'' *Id.* In response, BCI 2 stated that she ''was about to see, like a camera man and relatives. Why are you here for pain pills?'' *Id.* at 3.

Respondent then asked: ''what's going on. Now where is it hurting you the most?'' *Id.* BCI 2 replied: ''Right, lower right but umm. No we are good[.] I don't want to bug you. Right, lower right.'' *Id.* Next, Respondent asked BCI 2 to ''stand up for'' him and ''[p]oint to right where it is real quick.'' *Id.* BCI 2 stood up, pointed to her right lower hip area about three inches from her spine, Tr. 285,[10] and said ''[u]mm right here.'' GX 7, at 3.

Respondent acknowledged the location to which BCI 2 had pointed and asked ''does it shoot to like your hip or like your leg?'' *Id.* BCI 2 responded: ''Ummm. No it just stays there. But umm like right now I have like nothing. I feel good. I have good days and bad.'' *Id.* Respondent then had BCI 2 hold out her arms, placed his hands on her arms, Tr. 213, and directed her to press up and press down, *id.,* after which he asked: ''[d]oes it ever cause you to limp?'' GX 7, at 3; *see also* Tr. 213. BCI 2 answered ''[n]o.'' GX 7, at 3.

Respondent had BCI 2 ''[w]alk towards the wall and back,'' after which he asked if she was ''a smoker.'' *Id.* BCI 2 said ''no'' and asked if she ''look[ed] like one,'' prompting Respondent to say: ''No, you look . . . That's one of those medical questions. Just in case.'' *Id.* BCI 2 then asked if she ''ha[d] more refills than I am supposed too?'' *Id.* Respondent answered: ''No. . . . [N]ot at all'' and asked ''And how long have you had the pain? And how old are you now?'' *Id.* After BCI 2 said she was ''41,'' Respondent told her she could ''sit down'' and asked: ''How long have you had the lower back pain.'' *Id.* BCI 2 replied: ''Uh god for over 10 years,'' and Respondent asked: ''how did it start?'' and ''[w]as it [an] injury?'' *Id.* BCI 2 answered that she ''fell off of a horse,'' and Respondent said ''ok.'' *Id.*

BCI 2 then said: ''And umm. Actually everything was fine though and I wasn't sure but I had the MRI but there was . . . there is nothing wrong, nothing broken, X-rays and all that stuff.'' *Id.* at 4. Respondent asked her when she had last had an MRI, and BCI 2 answered that she was ''actually going today at 2 p.m.'' *Id.* Respondent then asked: ''MRI of what? Your spine?'' and BCI 2 replied: ''Yep yep, cause doctor [R.] wanted me to get one and umm. So it's actually today at 2.'' *Id.*

Respondent asked BCI 2 ''do you get 'muscle spasms?''; BCI 2 said ''nope.'' *Id.* Respondent then asked: ''And when does it hurt the most?'' *Id.* BCI 2 answered: ''Sometimes on occasion like when my alarm clock goes off in the morning and I am totally dead asleep and I'll twist to shut off my alarm . . . That's when it kind of screws it up.'' *Id.* Respondent said ''ok,'' and BCI 2 added: ''But I haven't had that happen in a very long time like literally I have been really doing well.'' *Id.*

Respondent asked if she had ''lost any flexibility or anything like that?'' *Id.* BCI 2 answered that she did not ''think so.'' *Id.*

Respondent then asked BCI 2 if she had any allergies. *Id.* BCI 2 answered: ''Nope. She [Dr. R.] put me on Soma,'' prompting Respondent to comment that he saw that and Dr. R. ''put you on quite a bit.'' *Id.* Respondent then told BCI 2 that ''I will give you some Norco and I'll give you some Soma but I will only give you Soma for like twice a day.'' *Id.* BCI 2 said ''ok,'' and Respondent repeated ''[t]wice a day but I will give you some Norcos,'' and asked BCI 2 if she ''ha[d] any questions.'' *Id.* After Respondent confirmed that BCI 2 had given a urine sample the visit ended. *Id.* at 4–5. Consistent with Respondent's statement, the evidence shows that Respondent issued to BCI 2 prescriptions for 60 Norco (hydrocodone/apap) 5/325 mg. and 60 Soma (carisoprodol) 350 mg. GX 8, at 1–2. Respondent did not include BCI 2's address on either prescription. *See id.*

In the subjective section of the visit note, Respondent wrote; ''LBP x 10 yrs [secondary] to falling off a horse.'' GX 11, at 35. As for his physical exam findings, he documented: ''[p]oint tenderness to [right] lower back, shoots to left hip,'' ''Full ROM,'' ''slight limp,'' ''5/5 Muscle strength,'' ''Good Muscle tone,'' ''CN II–XII intact,'' ''2+ pulses throughout,'' ''oriented x 3,'' and ''2/2 reflexes.'' *Id.* As for his diagnoses, he listed ''LBP x 10 yrs,'' ''spasm,'' ''Ø Smoking,'' and ''Abnormal Gait periodically.'' *Id.*

The Government's Expert's Testimony

The Government called Carl W. Christensen, M.D. and Ph.D., as an

[10] BCI 2 also described this area as her ''lower right back.'' Tr. 213.

Expert witness in pain management and the standard of care applicable in Michigan to general practitioners treating patients who complain of pain. Tr. 350–51. Following *voir dire,* the CALJ accepted Dr. Christensen as an expert in these areas and the CALJ ultimately found his testimony generally credible. R.D. at 40–41.

Dr. Christensen holds a Bachelor of Arts in Biology from Wayne State University (W.S.U.), which he obtained in 1977, as well as both a Doctor of Medicine and Doctor of Biochemistry from the W.S.U. School of Medicine, which he obtained in 1979 and 1985, respectively. GX 12, at 1–2. While much of his initial professional experience was in the specialty of obstetrics and gynecology, in 2002, Dr. Christensen began working with another physician who specialized in treating pregnant heroin addicts and became Board Certified in Addiction Medicine; he also testified that he has been practicing chronic pain medicine ''since.'' Tr. 350; *see also* GX 12, at 9. His professional experience includes serving as Director of Addiction Medicine Services, Detroit Medical Center, and as Medical Director of both the Dawn Farm Treatment Center in Ypsilanti, Michigan, and Spera Detox Center in Ann Arbor, Michigan. GX 12, at 5. He is a member and Distinguished Fellow of the American Society of Addiction Medicine, a member and former President of the Michigan Society of Addiction Medicine, and a member of the American Academy of Pain Management. *Id.* at 7. Dr. Christensen holds a current Michigan Medical License and Michigan Controlled Substance License, as well as a current DEA registration and DATA-Waiver Identification Number for treating patient with buprenorphine. *Id.* at 8. Dr. Christensen is also ''one of two speakers employed by the Michigan State Medical Society to teach safe opioid practices . . . to local medical societies.'' Tr. 354; *see also id.* at 361–62 (discussing Risk Evaluation Mitigation Strategy lectures, in which he discusses the ''safe prescribing of all opioids, including the new CDC . . . FDA guidelines'').

Dr. Christensen testified that his practice primarily involves treating patients who are already taking controlled substances and who have been referred to him because the medication is no longer effective, the patient's physician suspects the patient is misusing or abusing the medication, or the patient needs to be prepared for surgery. *Id.* at 353. He also testified that he ''do[es] pain medication management'' and that he ''manage[s] pain medications and associated medications, such as sedatives, muscle relaxers, and any medication that may interfere with pain management.'' *Id.* at 355.

On *voir dire,* Dr. Christensen acknowledged that he is not board certified in pain management because he does not do interventional pain management and that he does not believe he is eligible to sit for that board's examination. *Id.* at 357–58. However, he testified that he does take patients without referrals who are addicted to pain medication, and that ''probably over half'' of his patients are patients who are being treated solely for pain. *Id.* at 360–61.

Also, on cross-examination, Dr. Christensen acknowledged that he had previously testified in court in two pain-related cases for the government. *Id.* at 484–85. He testified that since 2012, he has reviewed ''between 10 and 20'' cases total for the government, and that in approximately two-thirds of these matters, he rendered an opinion that supported the government allegations.[11] *Id.* at 485–86. He also testified that he has reviewed one case on behalf of a physician accused of improper prescribing and rendered an opinion that ''was positive for the physician'' and that case ''was dismissed.'' *Id.* at 486.

Dr. Christensen's Testimony on the Standard of Care

Dr. Christensen testified that as a general matter, the standard of care requires that a patient present a complaint, after which ''the first thing [a] physician should do is take a history,'' *id.* at 489, which is ''relevant to [the] complaint.'' *Id.* at 365. The physician should then do ''a physical examination that deals with that complaint.'' *Id.; see also id.* at 489. After the exam, the physician may need to do lab work and diagnostic tests ''depending upon . . . the specific complaint . . . . [a]nd then make a diagnosis and offer a plan of treatment.'' *Id.* at 365; *see also id.* at 489–90. Dr. Christensen acknowledged, however, that a physician may not be able to do diagnostic and lab tests at the initial visit but that these tests can be ordered. *Id.* at 367–68. He also testified that while a treatment plan should be offered, the plan may need to wait until the diagnosis is confirmed through testing. *Id.* at 490.

In taking the history of a pain patient, Dr. Christensen testified that he uses and teaches medical students to use a mnemonic called ''OLD CARTS.'' *Id.* at 373–74. He further testified that the steps set forth by this mnemonic constitute the standard of care in Michigan. *Id.* at 374. Dr. Christensen explained the questions pertinent to each letter as follows: O, the onset of the pain (when it began); L, the location of the pain; D, the duration of the pain; C, the character of pain (*i.e.,* whether it is dull, squeezing, burning, or shooting); A, factors that aggravate the pain; R, factors that relieve the pain; T, timing or what brings the pain on; S, the severity of the pain. *Id.* at 373–74. He further explained that as part of this process, the standard of care requires the assessment of the patient's functional or activity level with the pain. *Id.* at 374.

With respect to a chronic pain patient, who would be a patient ''who has had pain for more than four to six months,'' Dr. Christensen would be concerned about the patient's psychiatric history as anxiety or depression ''can dramatically affect [a patient's] pain level.'' *Id.* at 368. Dr. Christensen would also want to know if a patient has a substance abuse problem and ''do an addiction evaluation to find out if there was also a co-occurring or a primary substance abuse problem.'' *Id.* Dr. Christensen further explained that he ''would want to know what surgeries [the patient] had in the past and what procedures had been done.'' *Id.*

Dr. Christensen explained that once a physician makes a diagnosis of chronic pain and determines the patient's underlying condition, a treatment plan is offered to the patient. *Id.* at 369. He testified that on a return visit, the physician would focus on the patient's chief complaint, a review of systems, and the history of the patient's present illness, the latter involving asking the patient ''how the pain's affecting you?'' ''how strong the pain is?'' ''does it radiate?'' and ''what makes it worse and what make it better?'' *Id.* at 370. Dr. Christensen testified that the physician ''would then be involved primarily in medical decision-making, which means . . . look[ing] at the level of risk that the patient has,'' and that ''in chronic pain management[,] . . . using a controlled substance [is] consider[ed] to be moderate risk.'' *Id.* The physician would also ''look at the amount of information that [the physician] need[s] or the information that [the physician] ha[s]'' and ''the number of problems that the

[11] Dr. Christensen also testified as to his hourly rate for both reviewing cases and testifying in court, as well as various functions he performs for Blue Cross/Blue Shield which include serving on the Medicare Drug Utilization Review Committee. Tr. 487–88.

patient has'' and formulate a treatment plan.[12] *Id.*

Asked on cross-examination whether his OLD CARTS + ''sets the minimum standard of care,'' Dr. Christensen testified that ''[t]his applies to [the] history of present illness, which depending upon the level of the visit requires a certain number of elements depending on the visit.'' *Id.* at 506. He further agreed that OLD CARTS ''is a helpful mnemonic'' that helps a physician ''remember the types of things to ask that meet that standard.'' *Id.*

The Government also asked Dr. Christensen whether the standard of care is different when ''a physician is acting as a *locum tenens* physician or is in a group practice?'' *Id.* at 375. Dr. Christensen testified that ''the standard of care is the same whether somebody is in a solo practice, a group practice, a hospital practice, or *locum tenens.* You're held to the same standards of care in the practice of medicine, and the underlying ethical principles are still the same.'' *Id.*

Turning to BCI I's first visit with Respondent (February 19, 2015), Dr. Christensen testified that the former's statement that ''I just came back for refills'' raised a red flag that he was just seeking medication ''and has no other complaint.'' *Id.* at 376. As for BCI I's statement that ''I take Norco for my back, and I take Xanax on the weekends,'' Dr. Christensen testified that this raised a red flag that the patient was either misusing or diverting controlled substances. *Id.* at 377. Dr. Christensen also noted that the statement ''I take Xanax on the weekends . . . does not appear to be someone who's complaining about an anxiety diagnosis who's being prescribed Xanax for a documented anxiety disorder.'' *Id.* at 379. Dr. Christensen further found concerning the statement ''I take Norco for my back,'' because while ''back pain is one possible explanation,'' BCI 1 did not specifically complain of back pain, and while BCI 1 may have meant that, it may also ''be a sign of somebody who is self-medicating.'' *Id.* at 379–80.

With respect to BCI 1's seeking Xanax, Dr. Christensen testified that ''a reasonable practitioner . . . would want to know'' if there had been a diagnosis of anxiety disorder, who ''made the diagnosis,'' and what treatments had been tried. *Id.* at 381. With respect to BCI 1's seeking Norco, Dr. Christensen explained that he would ''want to know the same thing,'' including what the diagnosis was, what medications had been tried, ''and who made the diagnosis.'' *Id.*

Dr. Christensen also testified that the combination of drugs that BCI 1 claimed to be taking, *i.e.,* Norco and Xanax, was also a concern because ''[t]hey are both controlled substances'' and are ''synergistic,'' in that ''[t]hey are much more euphoric when taken together.'' *Id.* Dr. Christensen explained that this combination of controlled substances would cause concern as to the ''underlying diagnosis'' in that the ''primary diagnosis is chemical dependence rather than a combination of moderate to severe back pain and a documented anxiety disorder.'' *Id.* at 382; *see also id.* at 406 (testimony of Dr. Christensen: ''[F]rom this visit, it would appear that the diagnosis of back pain and anxiety is in doubt. There's a strong possibility of another diagnosis, which would be chemical dependency, and that would mean that you would not be prescribing these medications. And, again, I would recommend referral to a substance abuse specialist.'').

Next, Dr. Christensen testified that BCI I's statement that his back was ''[m]ostly just stiff'' is ''not an indication for prescribing Norco'' (hydrocodone). *Id.* at 383. As for the physical exam Respondent performed, Dr. Christensen testified that BCI 1 stated that his pain did not shoot anywhere and was localized, which means it ''is more likely to be joint or musculoskeletal pain.'' *Id.* at 386. Dr. Christensen then explained that the tests Respondent performed in which he held BCI 1's arms and had him push up and push down ''is a test for the cervical and upper thoracic nerves essentially in the neck.'' *Id.* Dr. Christensen noted, however, that BCI 1 complained of lower back pain and that this test was not appropriate for evaluating lower back pain. *Id.; see also id.* at 390.

Asked what the standard of care required of Respondent after he had BCI 1 point to where his pain was, Dr Christensen acknowledged that this was ''a return visit for this patient.'' *Id.* at 386. Dr. Christensen explained, however, that ''if a physical examination were to be done as part of the . . . visit, then you would want to check for tenderness and spasm in that area,'' and that this would be done either by ''push[ing] on the patient's back or hav[ing] the patient push on their [sic] back and tell you if it hurts.'' *Id.* at 386–87. Dr. Christensen subsequently testified that a reasonable practitioner would put his hands on the patient's back and feel for tenderness and for a muscle spasm. *Id.* at 387. As for whether a physician could properly check for tenderness or spasm if the patient is wearing clothing, Dr. Christensen testified that ''[i]t would be difficult'' but ''you could check for tenderness if you pushed hard enough.'' *Id.* Dr. Christensen testified, however, that he did not ''believe that you could test for spasm'' if the patient was wearing clothing. *Id.; see also id.* at 389.

As for the scope of an appropriate physical exam for evaluating lower back pain, Dr. Christensen testified that ''at a minimum'' a reasonable practitioner ''would check for flexion and extension,'' *id.* at 391, which involves seeing ''[h]ow far [a patient] can bend over before [he/she] has[s] moderate to severe pain'' and ''how far can they lean back.'' *Id.* at 390.[13]

Dr. Christensen again testified that on a return visit, a physical exam is not required and the physician can rely on the history and the medical decision-making. *Id.* at 391. Asked by the CALJ if he would have expected to see ''these tests . . . documented in the initial exam'' or would have ''just looked for the diagnosis,'' Dr. Christensen answered that ''if this was a return visit for the patient and I was seeing the patient for the first time, I would hopefully find these things in the initial examination and the reasons for the diagnosis in the initial examination.'' *Id.* at 392. On further questioning as to whether, under such circumstances, he would be looking in the chart for documentation of various tests to support a diagnosis before he prescribed controlled substances, Dr. Christensen answered: ''If the diagnosis is in question, if the initial evaluation did not document this, I would want to confirm

[12] With respect to how a physician should evaluate whether to continue prescribing controlled substances after a patient's initial visit, Dr. Christensen testified as to the use of what he called ''the five As'' to assess the patient. *Id.* at 370. Dr. Christensen explained that these involve: (1) Assessing the level of ''analgesia'' or pain level; (2) asking the patient about his/her activity or ''functional level''; (3) asking ''about adverse effects, which for opioids typically consist of . . . constipation, sweating, [and] swelling''; (4) looking for aberrant behavior such as use of illicit drugs or the failure to use prescribed drugs by conducting drug screens and obtaining MAPS reports to look for doctor shopping; and (5) looking at how the drugs ''affect'' the patient and how the patient appears and behaves during the visit. *Id.* at 370–72. Dr. Christensen testified that findings as to the five As should be documented every time. *Id.* at 373.

Yet on cross-examination, Dr. Christensen answered ''no'' when asked: ''[t]here's no absolute standard of care requirement to go through these five As, right?'' Tr. 506.

[13] Dr. Christensen identified other tests including ''checking for side to side motion,'' doing a straight leg raise test if the patient complains of radiation, checking muscle strength in the lower extremities by having the patient push in and push out, checking the lower extremities for edema, checking the reflexes in the lower extremities, and if there is a neurological complaint of numbness or pain, ''check[ing] for touch and sensation and pain in the bottom or the top . . . of the feet.'' Tr. 390.

the diagnosis before I prescribed controlled substances.'' *Id.* at 393.

As for BCI 1's statement that his back was ''mostly just stiff,'' Dr. Christensen acknowledged that there could be ''multiple reasons for it'' such as ''joint disease,'' ''deconditioning,'' ''central pain syndrome,'' or an ''underlying medical condition.'' *Id.* at 389. Dr. Christensen nonetheless testified that he would ''[n]ot automatically'' equate stiffness with a complaint of pain and that to connect the two, the patient would also have to complain of pain. *Id.* at 389–90.

Addressing BCI 1's statement that he took Xanax ''[b]ecause when I do that it keeps me from drinking too much moonshine on the weekends,'' Dr. Christensen noted that drinking and taking Xanax is ''a potentially lethal combination. And if you add [h]ydrocodone, it's even more dangerous.'' *Id.* at 394. He explained that ''[t]he combination of alcohol and benzodiazepines, [such as] Xanax, increases [the] chance of respiratory depression,'' and that when you ''throw in an opiate . . . like [h]ydrocodone,'' the combination is ''even more dangerous.'' *Id.* Continuing, Dr. Christensen testified that ''[i]f somebody told me they were drinking on the weekends and there was a prescription for Xanax, [he] would be very concerned.'' *Id.* He added that drinking is ''a contraindication to'' Xanax, and because ''the ethical principle here is do no harm[,] [he] would not prescribe . . . Xanax.'' *Id.* at 395.

Asked by the CALJ if this was his personal standard or the standard of care in Michigan, Dr. Christensen explained that because the FDA warning label strongly recommends against the use of alcohol when taking this medication, if the physician believes the patient is ''going to continue drinking,'' ''the standard of care is not to prescribe the medication.'' *Id.* at 396. Dr. Christensen then testified that ''with that statement'' (presumably BCI 1's statement), a reasonable general practitioner would refer the patient to an addiction specialist or counselor and not prescribe the medication. *Id.* at 396–397.

Dr. Christensen also found concerning Respondent's prescribing of Soma (carisoprodol) to BCI 1. *Id.* at 397. Dr. Christensen explained that carisoprodol ''is now a controlled substance based on its abuse potential'' and that with respect to BCI 1, ''you've got somebody who admits to alcohol use, who is prescribed Xanax, and now you're adding a third sedation which also increased the risk of accidents and overdose and death.'' *Id.* at 397–98. Dr. Christensen then testified that the combination of hydrocodone, Xanax, and Soma ''is commonly known as the holy trinity,'' which is ''a very euphoric combination, and [is] dangerous because you're mixing two sedatives together'' as well as hydrocodone, which creates ''the additive effect on respiratory depression.'' *Id.* at 398–99.

With respect to Respondent's statement that he was prescribing carisoprodol for BCI I's muscle spasms, GX 3, at 12, Dr. Christensen testified that he ''didn't see any diagnosis of muscle spasms'' and that a physician would diagnose a patient as suffering from spasms by palpating the patient's back. Tr. 399. According to Dr. Christensen, Respondent did not do this. *Id.*

Turning to the colloquy between Respondent and BCI 1 regarding the value of the drugs on the street, *see* GX 3, at 14–15, Dr. Christensen opined that this raised a concern because BCI 1 ''did not initially raise it but was engaging in a discussion of diversion'' and yet Respondent was ''prescribing him controlled substances.'' *Id.* at 400–01. Dr. Christensen further testified that in response to this conversation, a physician acting in accordance with the Michigan standard of care would need to ''make sure that there was an opioid agreement'' with the patient and ''to reinforce the opioid agreement and to monitor'' the patient ''or correct use'' by doing urine drug screening. *Id.* at 402.

Next, the Government asked Dr. Christensen whether concerns were raised by the colloquy during which BCI 1 stated that ''a couple of times'' he had ''r[un] out of pills'' and had to ''trade'' with his neighbor, Respondent asked if it was ''an equal trade,'' and BCI I added that he had asked Dr. Vora ''for a couple [of] extra'' pills'' and that Dr. Vora had given him a couple of extra pills which he had given back to his neighbor. Tr. 402–03; GX 3, at 15. Dr. Christensen testified that the patient ''is admitting to diversion'' and that a physician must explain to the patient that this is illegal and that the patient ''ha[d] signed an opioid agreement'' and that ''according to the . . . agreement . . . if this occurs [the patient] will not be able to receive controlled substances.'' *Id.* at 403. Dr. Christensen further testified that, ''at a minimum,'' a reasonable practitioner would explain that the opioid agreement prohibits trading and selling pills, ''and that if it were to happen, [the physician] would not be able to prescribe him medications anymore.'' *Id.* at 405. He also testified that based on the transcript, the standard of care would require referral to an addiction specialist. *Id.* at 406.

Turning to BCI 1's patient file, Dr. Christensen testified that the November 10, 2014 medical history form was largely ''blank, including [the section pertinent to] muscle, joint and bone.'' *Id.* at 410. Dr. Christensen testified that ''[i]f you are getting a history and this isn't complete, you have to verify it independently'' and that a physician ''would be responsible for confirming the portion of the history and exam that dealt with your treatment plan, especially if it included controlled medications.'' *Id.* at 410–11. Dr. Christensen then testified that he ''would look at the remainder of the file, which would be Dr. [Vora's] initial electronic medical record.'' *Id.* Dr. Christensen noted, however, that this record was also missing information, and that a reasonable practitioner would have to ''[o]btain the information'' and the missing history ''if you are going to prescribe controlled substances.'' *Id.* at 411–12. With respect to the form which asked various questions about BCI 1's family history and which were not answered, GX 10, at 19, Dr. Christensen testified that the standard of care required obtaining this information because ''[i]f you are treating the patient for back pain and . . . ruling out substances abuse'' by the patient, ''a family history of psychiatric or substance use disorders is important.'' Tr. 413; *see also id.* at 551 (testimony of Dr. Christensen agreeing that a physician ''would want to look through the . . . medical record to see if . . . a proper history [was] conducted and . . . fill in the gaps from what the patient failed to report on [his] questionnaire'').[14]

As found above, BCI 1's file also contained a MAPS report. GX 10, at 23. Dr. Christensen found it notable that the report showed that BCI 1 had gotten four different prescriptions for Xanax and one prescription for amphetamines and that some of the providers, those whose offices were in Detroit and Marquette, were ''400 miles apart.'' *Id.*

[14] As for the history listed by Dr. Vora at the December 15, 2014 visit, which included both a social history and diet history, Dr. Christensen testified that there was ''no mention . . . of [the] presence or absence . . . of drug or alcohol use.'' Tr. 552. While Dr. Christensen acknowledged that BCI 1's self-report of alcohol use and Respondent's questioning BCI 1 as to whether he used marijuana rendered the history complete, Dr. Christensen expressed skepticism as to whether either Dr. Vora at the December 15, 2015 visit or Ms. S.A. (the person listed on the EMR as having reviewed BCI 1's Social History and Consumption/Diet) at the January 12, 2015 visit had actually done so. *Id.* at 553. When asked if ''it would be fair to assume that there were two separate people who looked at the patient's history,'' he replied: ''I believe it indicated that two different log-ons checked off that box'' and ''I don't know that it indicates they ever reviewed the history with the patient.'' *Id.*

at 413–14. Dr. Christensen testified that the ''high geographic distance between providers'' and the ''multiple providers'' are ''signs of doctor shopping'' and ''diversion or misuse.'' *Id.* at 414.

Turning to Respondent's progress note for the visit, Dr. Christensen noted that while it documented a complaint of ''associated muscle spasm,'' BCI 1 had ''complained of stiffness,'' which ''is a symptom.'' *Id.* at 415. Dr. Christensen testified that ''spasm is a physical finding'' which ''would need to be corroborated later on in the examination'' by ''palpation,'' but according to the testimony of BCI 1, Respondent never touched him and thus could not possibly have diagnosed BCI 1 as having a muscle spasm. *Id.* at 415–16.

As for the other exam findings in this visit note, Dr. Christensen testified that he ''didn't see documentation of [a] complaint of point tenderness.'' *Id.* at 417. Dr. Christensen acknowledged that he had no ''way of knowing whether [BCI 1] had a limp that you couldn't see on the video'' and that ''[h]is muscle tone in the upper extremities may have been excellent.'' *Id.* As for the notation that ''CN IV–XII intact,'' Dr. Christensen testified that video did not show that Respondent did the various cranial nerve tests as documented in the note. *Id.* at 417–19.

After noting Respondent's diagnoses of degenerative disc disease, positive ETOH, and anxiety, and the three prescriptions (Norco 7.5/325, SOMA 350, and Xanax .5), Dr. Christensen then opined that based on his review of the video, the transcript and the medical file, Respondent's prescription for Norco was inappropriate as ''[t]here was no documentation of moderate to moderately severe pain.'' *Id.* at 419–20. There was also the ''concern[ ] about another underlying diagnosis,'' *i.e.,* substance abuse, ''that would have mandated either a referral or not writing the prescription.'' *Id.* at 420.

Dr. Christensen opined that the Xanax prescription was ''not appropriate'' because the drug is ''contraindicated in somebody who is actively drinking.'' *Id.* Dr. Christensen also noted that he ''did not see any documentation of an anxiety diagnosis.'' *Id.*

Dr. Christensen also opined that the Soma prescription was ''not appropriate.'' *Id.* He explained that this drug is ''indicated for short-term treatment of muscle spasms,'' but that ''there is no documentation of this'' condition. *Id.* Dr. Christensen further explained that Soma was ''contraindicated with this patient's history.'' *Id.* He then opined that each of the three prescriptions Respondent issued at BCI 1's first visit was not issued for a legitimate medical purpose and in the usual course of professional practice. *Id.* at 425–26.

Turning to BCI 1's second visit (Mar. 19, 2015), Dr. Christensen noted that when Respondent asked BCI 1 about his pain, the latter responded that ''everything is cool,'' and that ''there's no pain level.'' *Id.* at 428. He also noted that BCI 1 complained only of stiffness, that BCI 1denied having pain that radiated down his leg, and that when Respondent asked BCI 1 to rate his pain level on a 1–10 scale, BCI 1 replied that he was ''good today.'' *Id.* at 428–29. Dr. Christensen opined that BCI 1's response when asked to rate his pain on the numeric scale was ''a non-responsive . . . and . . . an evasive answer, which can be signs of drug-seeking behavior.'' *Id.* at 431.

Dr. Christensen opined that this ''was a negative evaluation for moderate to moderately severe pain.'' *Id.* at 429. Dr. Christensen also testified that a reasonable practitioner ''would have asked [BCI 1] about [his] functional level. . . . He would have asked about side effects. . . . And he would have . . . inquired about any aberrant behaviors.'' *Id.* He further testified that whether BCI 1's second visit was evaluated either on the basis of ''face-to-face time,'' which was under two minutes, or ''by complexity,'' this was not an adequate evaluation. *Id.* at 431. While Dr. Christensen noted that at a return visit, only two of the three components of a history, physical, and medical decisionmaking must be performed, he opined that if the adequacy of the evaluations was based on its ''complexity,'' there was not ''enough of an examination . . . to allow the medical decision-making.'' *Id.*

As noted above, the subjective section of the visit note repeats nearly verbatim the subjective notes written in the February 19 visit note in that it states: ''44 y/o WM c DDD For approximately 10 yrs. Pt has associate muscle spasm c LBP.'' GX 10, at 32; *see also* Tr. 432. Dr. Christensen testified that the subjective section of the visit note ''appears to be a repeat of the history from the previous examination.'' Tr. 432. Dr. Christensen noted, however, that while it is allowable to repeat the history from a previous examination, ''there's no additional information from the visit that occurred'' and nothing occurred at this visit to substantiate what was written in the subjective section of the note. *Id.* at 432–33.

Dr. Christensen further testified that neither the video nor the transcript provide evidence that Respondent performed the tests necessary to make several of the findings he documented in the note's physical exam section. Dr. Christensen specifically identified the findings of ''moderate point tenderness to low back,'' ''cranial nerves 2 through 12 intact,'' ''2+ pulses throughout,'' [15] and ''2/2 reflexes'' as not supported by tests. *Id* at 433–35. Dr. Christensen also testified that with the exception of the diagnosis of Etoh, which was based on BCI 1's admission that he used alcohol, there was no documentation of findings to support the diagnoses of degenerative disc disease in the lumbar area, anxiety, and muscle spasm. *Id.* at 447; *see also* GX 10, at 32.

Noting the prescriptions for Norco and Xanax that were issued by Dr. Vora at BCI 1's January 12, 2015 visit, the Government asked Dr. Christensen whether the results of the urine drug screen administered on February 19, 2015, which were negative for these drugs, were aberrational. Tr. 439–441. Dr. Christensen noted, however, that the prescriptions were for a one-month supply and the drug screen was administered five weeks after the prescriptions were issued. Dr. Christensen testified that while it is possible the drugs should still show up in the urine screen even if BCI 1 has stopped taking the drugs one week earlier, ''[t]here's no definite answer that I can give'' because these results may have been caused by ''run[ning] out of medications, which is legitimate.'' *Id.* at 440–41. Dr. Christensen testified that the standard of care required repeating the drug screen and doing so ''at a time when the patient is taking the medications to see what happens'' as well to consult with the patient. *Id.* at 441–42. Although Respondent repeated the drug screen at the second visit, he did not address the results with BCI 1. *See* GX 10, at 34. While Dr. Christensen further testified that the standard of care required that Respondent document how he addressed the test result, there is no such documentation in the March 19 visit note. Tr. 443–444; *see also* GX 10, at 32.

With respect to each of the three prescriptions (65 Norco 7.5/325 mg, 60 Xanax 0.5 mg, and 30 Soma 350 mg) issued by Respondent to BCI 1 at this visit, Dr. Christensen opined that the prescriptions lacked a legitimate medical purpose. Tr. 448.

[15] With respect to this notation, Dr. Christensen testified that the notation ''that the pulses are normal throughout . . . implies the upper and lower extremities.'' Tr. 434. He then explained that to make this finding, ''[y]ou check typically for the radial pulse in both wrists and either the posterior tibia, which is behind your ankle, or the dorsalis pedis pulse, which is in the front of, the top of your foot.'' *Id.* at 435.

Dr. Christensen also testified about BCI 2's March 19, 2015 visit with Respondent. As found above, after an exchange of pleasantries, BCI 2 stated that she was ''[j]ust here for refills'' and answered his question ''how are you feeling,'' stating: ''I feel great today.'' Tr. 449. When further asked by Respondent to ''tell me how you have been doing,'' BCI 2 replied: ''actually, I've been doing really good. I have no complaints.'' *Id.*

With respect to this exchange, Dr. Christensen testified that BCI 2's statement that she had ''no complaints . . . by itself does not mean anything.'' *Id.* at 450. Continuing, Dr. Christensen explained that ''there's no identification yet if she's been taking the medication and if the medication is the reason . . . for how she feels. And, again, [BCI 2] states, 'I'm just here for refills.' '' *Id.*

Dr. Christensen testified that a practitioner acting under the standard of care would follow up this exchange by ''ask[ing] if [the patient has] been taking the medications, . . . then ask[ing] about pain level, activity level, side effects, and mak[ing] inquiries about are they [sic] having any problem with aberrant behavior, are they [sic] running out early.'' *Id.* Dr. Christensen then testified that none of this was done. *Id.*

Addressing the portion of the colloquy in which Respondent asked BCI 2 ''where is it hurting the most'' and BCI 2 replied ''[r]ight, lower right but . . . no, we are good,'' Dr. Christensen testified that while BCI 2 ''identifie[d] a location . . . again, there's no direct answer.'' *Id.* at 450–51. As for the physical exam Respondent performed (after BCI 2 pointed to her lower back near her right hip) which involved having BCI 2 hold out her arms and press up and down as he held them, Dr. Christensen again testified that this ''tests for upper extremity strength and integrity of the nerves in the neck and upper thoracic areas, which is the upper back'' and would have no value in evaluating a rear right hip issue. *Id.*

As found above, after BCI 2 denied that she got muscle spasms, Respondent asked ''when does it hurt most,'' and BCI 2 replied that ''sometimes,'' when she was asleep, she would ''twist to shut [her] alarm off'' and ''screw[ ] it up,'' but this had not ''happen[ed] in a very long time'' and she had ''been really doing well.'' GX 7, at 4. Regarding this exchange, Dr. Christensen testified that ''[t]here's no documentation of a moderate or higher pain level other than being stiff in the morning when you wake up. There's no discussion of whether or not this is due to her pain medications.'' Tr. 454. Dr. Christensen then opined that a reasonable practitioner would ask a patient who said she was not having any pain if she was taking her pain medications and then evaluate based on the answer. *Id.* at 455. Dr. Christensen noted that there was no indication in the transcript that Respondent asked this question. *Id.*

Dr. Christensen further noted that nothing was checked on the medical history form filled in by BCI 2 with respect to any symptoms of muscle, joint or bone pain even though she presented with ''potential complaints of back pain'' and that this should have prompted a discussion between Respondent and her. *Id.* at 456. Dr. Christensen further testified that a reasonable ''practitioner is responsible for obtaining the history, so . . . he or she would need to ask the patients the questions directly'' and fill in the blanks. *Id.* at 457.

As for the drugs (Norco, Ambien, and Xanax) which BCI 2 listed on the medical history form as her current medications, *see* GX 11, at 10, Dr. Christensen again observed ''that Norco and Xanax is a potentially dangerous combination and a patient who is prescribed these or taking these, I'm concerned about another underlying diagnosis,'' that being dependence. Tr. 457–58. Dr. Christensen further explained that while Ambien ''is not technically a benzodiazepine . . . it is very similar and its side effects'' and risks are similar to those of benzodiazepines. *Id.* at 457. Dr. Christensen testified that this drug combination raises concern as to why it ''is being prescribed or taken'' and a practitioner would ''need to confirm that there was a legitimate medical diagnosis for it and not another underlying diagnosis, such as dependence.'' *Id.* at 458.

Turning to the family history form (GX 11, at 12) on which BCI 2 noted that the reason for her visit was ''Refills—Norco, Ambien[,] Xanax,'' Dr. Christensen testified that this explanation is not one that he would typically expect a patient to provide at a first visit, *id.* at 462–63, and that ''[a] practitioner would need to be concerned that someone was drug seeking'' and visiting the doctor ''simply to get the medications,'' especially given the combination of drugs. *Id.* at 458. Moreover, even after the CALJ questioned whether the concern would exist if it was not the patient's first visit to the practice, but was the first visit with the doctor, Dr. Christensen explained that ''[i]f you are going to prescribe a controlled substance, the practitioner needs to confirm the diagnosis.'' *Id.* at 460.

As for the Pain Clinic History Questionnaire completed by BCI 2, Dr. Christensen noted that there was no ''description circled for the pain,'' and nothing was ''circled for what'' increased the pain'' and for how the pain made her feel. *Id.* at 461; *see also* GX 11, at 23. He observed that while her ''pain level is listed as 0 to 4,'' there was no notation as to whether this was with medication or without medication. *Id.* at 461. He also noted that the location of the pain was not circled. *Id.* Dr. Christensen further observed that various sections of the form, including BCI 2's work history, domestic situation, and family history were left blank. *Id.* at 462.

Turning to the next page of the form, Dr. Christensen noted that while BCI 2 had indicated that she used alcohol, there was no discussion as to ''how much [she was] drinking,'' because depending upon ''the amount and the frequency, it will put [the patient] at risk of increased side effects and risks from the combination of medications they're currently taking.'' *Id.* Dr. Christensen further noted that the standard of care requires a physician to obtain this information. *Id.* at 462.

Addressing the note Respondent wrote for this visit, Dr. Christensen took issue with the adequacy of the subjective section, observing that it contained no notations about BCI 2's ''pain level, [her] medications, any side effects, [and] any problems with medications.'' *Id.* at 464; *see also* GX 11, at 35. As for the physical exam findings documented by Respondent, Dr. Christensen identified multiple findings which the video and transcript show did not occur. Tr. 464–65.

With respect to his finding of point tenderness to BCI 2's right lower back, Dr. Christensen noted that ''the investigator said she was good and she was great and there was no problem.'' *Id.* at 464. He also reiterated his earlier testimony that point tenderness would be evaluated by palpating the patient and asking if it hurt or not; Dr. Christensen testified that he did not see that this occurred at this visit. *Id.* at 464–65. As for Respondent finding that BCI 2's pain ''shoots to left hip,'' consistent with the evidence, Dr. Christensen testified that he did not ''believe that she complained about any radiation to the hip.'' *Id.* at 465; *see also* GX 7, at 1–5. With respect to Respondent's finding of ''Full RoM,'' Dr. Christensen testified that while ''she did abduct and adduct her upper extremities . . . [t]here was no other testing of range of motion that I saw either in the upper or lower extremities.'' *Id.* Finally, while Respondent also made findings of ''CN II–XII intact,'' ''2+ pulses throughout,''

and ''2/2 reflexes,'' he did not see evidence that Respondent performed the tests used to make these findings. *Id.* at 465–66; *see also* GX 11, at 35.

Dr. Christensen reiterated his earlier testimony that on a repeat visit, the standard of care does not require a physical examination. Tr. 366. However, he further testified that a physical exam for a complaint of back pain would involve ''check[ing] for spasm in the lower back by palpation,'' checking both flexion and extension of the lower back, ''check[ing] the gait,'' and ''check[ing] the strength and reflexes in the lower extremities.'' *Id.* As for the items listed as Respondent's impression, Dr. Christensen acknowledged that while there was documentation of lower back pain based on BCI 2's statement that she fell off a horse 10 years ago as well as that she was a non-smoker, there was no documentation to support the diagnosis of spasm or an abnormal gait periodically. *Id.* at 467.

Dr. Christensen further observed that BCI 2's March 19, 2015 drug test produced several aberrational results. These included that she tested positive for THC and tested negative for Ambien and Xanax which had been prescribed with four refills at BCI 2's January 23, 2015 visit. *Id.* at 471; *see also* GX 11, at 37–38. He also testified that BCI 2 should have tested positive for Soma as this was prescribed to her at the February 20, 2015 visit. *Id.* at 471–72. Dr. Christensen acknowledged, however, that the March 19, 2015 test results were not available to Respondent on that date. *Id.* at 472.

Dr. Christensen then opined that the Norco and Soma prescriptions issued to BCI 2 on March 19, 2015 were not issued for a legitimate medical purpose. *Id.* at 473. Dr. Christensen further noted that because BCI 2's Xanax prescription had four refills, with Respondent's prescribing to her, she had current prescriptions for Norco, Xanax, Soma and Ambien, and that this ''combination of sedatives'' increases the patient's risk level and is ''a highly addictive . . . and . . . dangerous combination.'' *Id.* at 474.

On cross-examination, Dr. Christensen admitted that on the morning of his testimony, he had prescribed methadone to one of his pain management patients electronically and without either speaking with or seeing the patient. Tr. 475–76, 478. Dr. Christensen testified, however, that this patient has severe lumbar stenosis, that he has been on the same drug for eight years, that he sees the patient every 60 days, and that in between visits, the patient provides a urine drug screen two weeks before his prescription is reissued and a MAPS report is run on the day his prescription is due for renewal. *Id.* at 479. Dr. Christensen then explained that it is okay to simply issue a ''refill'' [16] if a ''patient is stable,'' the drug screens and MAPS reports are confirmatory, there is no evidence of aberrant behavior, and the patient is ''not experiencing undue adverse side effects.'' *Id.*

Dr. Christensen subsequently acknowledged that performing two of the three items (of history, physical examination, and medical decisionmaking) is not strictly required to prescribe controlled substances each month under the standard of care and that determining the past diagnosis and whether ''the patient is well managed on the medication . . . are two of the requirements'' of the standard of care. *Id.* at 481. He also acknowledged that Respondent's encounters with both undercovers were follow-up visits and that Respondent was not obligated to do all three things that are done at an initial visit but that he needed to verify that another physician had done these things. *Id.* at 490–91. Dr. Christensen explained, however, that whether it is okay to trust another physician's diagnosis ''would depend on what the record[s] showed'' and that he ''would want to see evidence of a pertinent examination'' by the other physician if he was to ''prescrib[e] a controlled substance for a history of back pain.'' *Id.* at 492; *see also id.* at 529–30.

After Dr. Christensen reiterated that a physician ''need[s] to make sure that it [the prescription] is for a legitimate medical purpose,'' Respondent's counsel asked him ''[w]here is that standard that you've said is the standard of care enumerated?'' *Id.* at 493. Dr. Christensen then asked to ''see the MCL,'' apparently referring to the Michigan Compiled Laws setting forth the ''good faith'' standard for prescribing controlled substances and testified:

> So it says that the prescribing is done . . . in the regular course of professional treatment by an individual who is under treatment by the practitioner for a condition other than the individual's physical or psychological dependence upon an addiction to a controlled substance.
>
> So I need to confirm, I believe the standard of care is you need to confirm that this is not an addictive disorder when you are seeing this combination of controlled substances being prescribed.

Id. at 493–94.

Then asked ''where it is enumerated that the standard requires you to not trust the diagnosis of an initial physician when you're conducting a follow-up visit,'' Dr. Christensen answered that the Michigan pain guidelines ''state that an examination shall be performed'' and that when he ''reviewed Dr. Vora's records, I did not see any musculoskeletal examination except for noting edema.'' *Id.* at 494.

Dr. Christensen acknowledged that there was a plus mark next to both lower back pain and endocrinology anxiety in the review of systems section of the note created by Dr. Vora for BCI 1's December 15, 2014 visit. *Id.* at 495 (discussing GX 10, at 3–4). He acknowledged that Dr. Vora's note contained various physical exam findings pertinent to BCI's 1 back, including that he had ''lumbar spine point tenderness'' and another notation indicated ''tenderness to palpation,'' thus indicating that Dr. Vora had palpated the spine and found it tender. *Id.* at 497, 530–31. Dr. Christensen also acknowledged that Dr. Vora's note documented ''Pain with Flexion/Extension,'' thus indicating that BCI 1 ''was asked to flex and extend [his] back''; he also testified that other notations indicated that Dr. Vora did other tests including a straight leg raise test, a toe heel walk, and that he palpated and did range of motion testing on various parts of BCI 1's spine. *Id.* at 497–500, 530. Dr. Christensen then conceded that if all of these tests were done, this would be an appropriate physical examination of a patient complaining of lower back pain on a ''follow-up visit.'' [17] *Id.* at 500, 530–31.

While Dr. Christensen testified that a finding of lumbar spine tenderness would ''assist with a determination of back pain,'' he added that back pain is a symptom even though it has its own billing code and that it is not a real diagnosis which would involve determining the cause of the pain. *Id.* at 500–01. He acknowledged that in some cases back pain could be caused by neuropathy and that there may be no physical manifestation of an injury such as on radiology exams (MRI or X-rays) or other physical findings. *Id.* at 501.

Dr. Christensen also acknowledged that a patient's complaint of pain is an important indicator of whether he/she has pain and that this ''should be taken as part of the history.'' *Id.* at 502. However, asked hypothetically whether a physician should believe a patient when a patient complains of high level

[16] While called a refill, this was actually a new prescription.

[17] Notably, Dr. Vora's note for BCI 1's November visit contains no physical examination findings pertinent to BCI 1's back. *See* GX 10, at 5–6. However, Dr. Christensen was not asked whether these findings reflect the performance of an appropriate physical examination for an initial visit.

of pain (nine out of 10) which cannot be verified by imaging or a physical exam, he answered that this ''depends on the rest of the history and examination.'' *Id.* Dr. Christensen then agreed that the existence or non-existence of aberrant behavior would be a factor in whether a physician should believe such a patient. *Id.* at 503.

Turning to the undercover visits, Respondent's counsel questioned Dr. Christensen regarding Respondent's engaging in the various steps set forth by the OLD CARTS mnemonic. Dr. Christensen acknowledged that Respondent asked both BCIs to identify the location of their pain (the L in OLDCARTS) at their initial visits with him. *Id.* at 506–07. As for the onset of the pain, Dr. Christensen disagreed with the suggestion of Respondent's counsel that Respondent's question (''So how long have you had low back pain?'') and BCI 1's answer (''Probably 10 years. Mostly just stiff.''), was an indication of the onset of BCI's pain, explaining that this exchange simply addressed the pain's duration; however, Dr. Christensen acknowledged that onset and duration are only different if the pain had gone away and returned. *Id.* at 508–09, 511. Asked if BCI 1's statement about back stiffness ''could also mean there is some pain,'' Dr. Christensen replied: ''it could mean there is almost anything associated with it.'' *Id.* at 510.

Turning to the character of the pain (the C in OLD CARTS), while Dr. Christensen acknowledged that Respondent's question (''Is the pain shooting or localized'') was designed to question whether one type of pain existed, he did ''not necessarily'' agree that Respondent satisfied this element, explaining that if BCI 1 had ''complained of only shooting pain, then it would.'' *Id.* at 511–12. However, Dr. Christensen acknowledged that BCI 1 had stated that the pain was localized. *Id.*

As for the aggravating or associated factors (the A in OLD CARTS), Respondent's counsel asked Dr. Christensen if he saw ''an indication in this visit that the patient made a statement about what makes [his] pain worse?'' *Id.* Dr. Christensen testified that he would need ''to go back over the,'' at which point, Respondent's counsel interrupted and stated: ''No need to go back over it.'' *Id.*

Then asked if the questions embodied in the OLD CARTS mnemonic are ''enumerated in the Michigan guidelines . . . for the use of controlled substance for the treatment of pain,'' Dr. Christensen initially testified to his belief that ''if you go through the entire document,'' those questions ''are in there.'' *Id.* at 513. However, asked if he believed ''all of the [OLD CARTS] elements are met in the Michigan guidelines,'' Dr. Christensen answered: ''No, I believe they refer to the four As actually.'' *Id.* Dr. Christensen then disagreed with Respondent's counsel that ''OLD CARTS isn't in the Michigan standard,'' explaining that he ''believe[s] [that the] history of present illness is, which is what we're referring to'' and that some of the elements are in the standard. *Id.*

Turning to BCI 1's statement at his first visit with Respondent (''I take Norco for my back and Xanax on the weekends''), Dr. Christensen adhered to his earlier testimony that the combination of Norco and Xanax was concerning, as was his statement that he took Xanax on the weekends. *Id.* at 513–14. While Dr. Christensen acknowledged that the statement ''can be interpreted that Norco is for back pain,'' he noted that BCI 1's statement ''doesn't specify that'' and that additional questions to ''confirm that'' were necessary. *Id.* at 514. While Dr. Christensen acknowledged that Respondent did engage in further questioning when he asked BCI 1 ''so you have back pain and some anxiety,'' he disagreed with the suggestion of Respondent's counsel that BCI 1's answer of ''I guess'' was confirmation that the latter had pain, characterizing the answer as ''evasive'' and subject to ''many'' possible interpretations. *Id.* at 515.

As for BCI 1's statement that he took Xanax because it kept him ''from drinking too much moonshine on the weekends,'' GX 3, at 9, Dr. Christensen acknowledged that Dr. Vora's January 12, 2015 visit note (GX 10, at 2) lists anxiety as a diagnosis. Tr. 516. Dr. Christensen also acknowledged that it is ''okay to trust medical documentation of a physician if . . . the elements of a diagnosis are met.'' *Id.* Dr. Christensen disagreed with the suggestion that BCI 1's earlier statement that ''I take Xanax on the weekends'' could ''refer to the patient having increased periods of anxiety because of whatever he does on the weekend,'' explaining that he did not know and would need to do ''appropriate questioning'' to reach this conclusion. *Id.* at 517. Dr. Christensen also testified that while the medical record lists a diagnosis of anxiety, he was ''not agreeing with any diagnosis of anxiety.'' *Id.*

Asked whether it is ''ever appropriate to simply cut . . . off'' a person who has been ''on Xanax for a long period of time,'' Dr. Christensen testified that it does not depend on the time the patient has been on the drug, but rather, ''[i]t depends on the situation.'' *Id.* at 518. Continuing, Dr. Christensen testified that ''[i]f somebody is mixing Xanax with another medication that is lethal, the patient should be referred immediately, but the medication, the prescription should not be continued.'' *Id.* Then asked if a physician ''might want to consider cutting that patient off'' where ''the harm of taking . . . Xanax and the other substance is greater than the potential harm for withdrawal from Xanax,'' Dr. Christensen answered ''[y]es'' and added that ''if somebody's taking Xanax on the weekend, there is no physical dependence to Xanax.'' *Id.*

Referring to BCI 1's statement that a couple of times he had run out of pills and traded with his neighbor, Dr. Christensen did not agree that this statement ''indicate[d] that the patient was consistently using the Xanax in a manner that he actually ran out of his pills prior to the end of the prescription,'' noting that BCI 1 did not ''specify which medication he's talking about.'' *Id.* at 520. While Dr. Christensen acknowledged that a patient going through alcohol withdrawal could suffer delirium tremens and be treated with benzodiazepines such as Xanax, he disagreed that BCI 1's statement that ''I take Xanax because it keeps me from drinking too much moonshine'' was a reference to his using Xanax to address ''withdrawal from alcoholism [sic].'' *Id.* at 521–22.

Still later on cross-examination, Dr. Christensen testified with respect to BCI 1's acknowledgment of having traded pills, that a patient's admission of diversion is ''not an automatic reason to discharge'' the patient and that ''you have to review the opioid agreement, let [the patient] know that this will not be tolerated, and monitor [the patient] more closely.'' *Id.* at 547. Dr. Christensen acknowledged that conducting urine drugs screens would be one of the things to do to monitor the patient more closely but that various guidelines including the Michigan guidelines do not require monthly drug screens. *Id.* at 547–48.

On further questioning as to the significance of BCI 1's statement about running out and trading pills, Respondent's counsel asked Dr. Christensen if this conduct could be explained by pseudo-addiction, which Respondent's counsel explained involved a patient engaging in aberrant behaviors because of under-treatment of this condition and not necessarily because of abuse or addiction. *Id.* at 549. While Dr. Christensen testified that pseudo-addiction occurs ''[i]n very rare cases'' and ''[p]rimarily in cancer patients,'' and that ''[i]t's possible'' this

could happen ''[i]f a patient had uncontrolled pain,'' when asked whether this could explain BCI 1's statement about trading narcotics with a neighbor, he answered: ''None of which I have seen.'' *Id.* at 549–51.

Turning to the physical exam Respondent performed on BCI 1, Dr. Christensen testified that the arm adduction and abduction tests do ''not determine pain'' but ''determine normal function'' in the upper spine and neck areas. *Id.* at 524. While Dr. Christensen acknowledged that a patient ''may have more difficulty exerting resistance if they have increased pain,'' he further explained that ''[t]he primary reason for doing that is to assess for damage, whether there's stenosis there.'' *Id.* at 524–25. He testified that this test is not used to determine ''a lack of function due to pain,'' explaining that ''[y]ou can have somebody who has give-away pain who can't tolerate the test at all. But when you perform what [Respondent] did, you're primarily assessing whether . . . there's [an] injury to the spinal nerves and spinal cord at that area.'' *Id.* at 525.

After recounting Dr. Christensen's testimony that the straight leg raise test is used to diagnose pain in the lower back, Respondent's counsel asked him if he was ''saying that you can't use a test like that to determine back pain in the upper extremities.'' *Id.* After clarifying that Respondent's counsel was referring to the straight leg test, Dr. Christensen explained that ''the straight leg test pulls on the sciatic nerve, which comes out of the bottom of the spinal cord.'' *Id.* Respondent's counsel then asked: ''Isn't it possible that pushing down on the arms could be a test for referred pain from the lower back to the upper spine?'' *Id.* at 525–26. Dr. Christensen answered that there is a test (the Waddell Test) which involves ''push[ing] on various parts of the body, and if the patient complains of pain all over . . . it's felt to be psychosomatic pain.'' *Id.*

Dr. Christensen also rejected the suggestion of Respondent's counsel that the abduction test on BCI 1's arms would have shown an inconsistency with his complaint of only lower back pain if BCI 1 had given up resisting and complained of pain. *Id.* at 526–27. As he explained, Respondent did not ask BCI 1 if the test ''was painful.'' *Id.* at 527. Nor did BCI 1 complain that the test was painful. GX 3, at 9. Dr. Christensen further rejected the suggestion of Respondent's counsel that that this test could be a sign of malingering by BCI 1. Tr. 527.

Respondent's counsel asked Dr. Christensen what the standard of care requires for a physical exam of a patient who complains of localized lower back pain. *Id.* at 528. Dr. Christensen testified that he ''would check for tenderness,'' ''for spasm actually next to the spine,'' and ''test for range of motion.'' *Id.* When Respondent's counsel asked if a physical exam is needed on a follow-up visit if the first exam was sufficient, Dr. Christensen testified that ''[i]f you are doing a physical exam as part of your office visit, then that [sic] would be the elements that I would do for low back pain.'' *Id.* at 529.

Respondent's counsel then revisited his earlier questioning regarding the physical examination documented by Dr. Vora in his December 15, 2014 visit note, with Dr. Christensen again acknowledging that the note documented that the various elements of an appropriate physical exam had been performed. *Id.* at 530–31. Dr. Christensen acknowledged that a second physician can reasonably rely on a medical record created by another physician who did a full and complete physical exam, provided that ''a diagnosis is confirmed'' and there is no indication that the first physician has not ''been truthful in his medical documentation.'' *Id.* at 531–32. While Dr. Christensen testified that when he ''see[s] a[n] electronic medical record like this that shows a complete visit, I'm always suspicious,'' he added that ''that's not a standard of care issue.'' *Id.* at 533. Subsequently, he agreed that ''if a physical exam was noted in the record, you wouldn't need to reconfirm the diagnosis.'' *Id.* at 534.

Dr. Christensen acknowledged that based on his review of the case, he did not know whether Respondent actually saw the urinalysis results. *Id.* However, he acknowledged that Respondent could not have seen BCI 2's March 19 test results and that her previous test result (Feb. 19, 2015) was below the level of detection. *Id.* at 534–36.

Dr. Christensen also acknowledged that the documentation by Dr. R. of her January 23, 2015 examination of BCI 2 reflected an ''appropriate'' musculoskeletal examination in that it involved identifying if there were spasms, checking for tenderness, and testing the range of motion of the lumbar spine. *Id.* at 537–38.

Dr. Christensen agreed that Dr. R.'s decision to order an MRI was a reasonable step to confirm her diagnosis of lower back pain and that patients ''occasionally'' do not get their MRI done before their next visit. *Id.* at 539–40. Dr. Christensen then acknowledged that it was reasonable for Respondent ''to trust'' the medical records created by Dr. R. for BCI 2's January 23 and February 20 visits. *Id.* at 540. He agreed that Dr. R. had issued to BCI 2 prescriptions for Norco, carisoprodol, and Xanax at these visits. *Id.* at 540–41. He acknowledged that there is no specific standard as to how often a physician should run a MAPS report and that this ''depends on the patient.'' *Id.* at 541–42. Dr. Christensen also testified that the MAPS report in BCI 2's file, which showed that she had last obtained Xanax from a Nurse Practitioner eight months earlier, was actually obtained prior to Dr. R.'s issuance of the prescriptions on January 23, 2015. *Id.* at 544.

While Respondent's counsel then suggested that based on the MAPS report and Dr. R.'s February 20 note, Respondent ''would have no indication that [BCI 2] had an outstanding prescription for Xanax at [the] time'' of her March 19 visit with him, Dr. Christensen testified that Respondent would know without running another MAPS report if ''the prescriptions were in the chart'' or if ''he asked the patient.'' *Id.* at 545. Dr. Christensen added that he ''saw no indication that [Respondent] asked her what medications she was taking.'' *Id.* at 545. And on questioning by the CALJ, Dr. Christensen testified that Dr. R.'s January 23, 2015 visit note (GX 11, at 16) documented that the Xanax prescription she wrote that date provided four refills and that Respondent ''would know that [BCI 2] was also taking Xanax.'' *Id.* at 546.

Asked by Respondent's counsel whether, based on ''a review of her history and her MAPS report,'' BCI 2 ''appeared to be a doctor shopper,'' Dr. Christensen testified: ''she [did] not appear to have legitimate pain complaints and [was] seeking Norco and Xanax and Ambien.'' *Id.* at 555. Respondent's counsel then asked whether ''it was reasonable for [Respondent] to prescribe [to her] based on her MAPS report and her prior history?'' *Id.* While Dr. Christensen acknowledged that the MAPS report did not show that BCI 2 was engaged in doctor shopping and that this was not a red flag, he then explained: ''[e]xcept that she presented requesting refills and there was no sign that she was getting medication.'' *Id.* at 556.

Observing that in the note for BCI 2's January 21, 2015 visit, Dr. Vora had written that his treatment plan included a referral for a mental health evaluation (GX11, at 14), Respondent's counsel asked Dr. Christensen if ''a referral like that would be for the purpose of treating potential addiction?'' *Id.* at 558. Dr. Christensen testified ''[n]ot necessarily, no,'' and after reading the contents of

the note, added: ''It doesn't say whether it's for addiction or anxiety.'' *Id.* at 558–59. While Dr. Christensen acknowledged that ''[i]t's possible'' that the referral was made because BCI 2 was engaged in ''drug-seeking behavior,'' this was ''[n]ot necessarily'' the case. *Id.*

Dr. Christensen agreed that both Norco 5 mg and 7.5 mg are indicated for moderate to severe pain, and that on a pain scale, moderate pain is pain above 4. *Id.* at 559–60. Asked if the pain level which BCI 2 noted on her pain history questionnaire as the usual level of her pain (''4'' on a 0 to 10 scale) should not be considered as ''moderate pain,'' Dr. Christensen initially said ''yes'' but agreed that there is no universal agreement as to that standard. *Id.* at 561. He then acknowledged that it would be okay to prescribe Norco to someone complaining of pain at a level of 4, but that would be the minimum level for prescribing the drug. *Id.*

Noting that BCI 2's pain history questionnaire indicated that her present pain was at the ''0'' level and that her pain was decreased by ''medication,'' Dr. Christensen disagreed that it would ''be fair to assume'' that Norco was the reason for her experiencing ''0 pain.'' *Id.* at 562. He testified that this was ''not necessarily'' the case, noting that ''when she said everything is great, we don't know that that's because of her pain medication.'' [18] *Id.* Dr. Christensen acknowledged that ''[i]t's possible'' that BCI 2's statement to Respondent that ''I'm good today'' was ''an indication that she's being well managed on her pain . . . with medication.'' *Id.* at 563–64. Dr. Christensen disagreed, however, with the suggestion of Respondent's counsel that it was ''not unreasonable for [Respondent] to conclude that that statement means my current regime is appropriate.'' *Id.* at 564. As he further testified: ''For a physician not to bother asking someone how much medication they're taking? Reasonable? . . . I'm sorry, sir, but I don't think it's reasonable for an interviewer to completely ignore asking, are you taking your medication? How much medication are you taking? It's missing.'' *Id.*

As for BCI 2's response (''Uh, just here for refills'') to Respondent's question (''so tell me what's going on?''), GX 7, at 2, Dr. Christensen acknowledged that BCI 2's answer could potentially be ''an indication that she is taking her medication and needs refills.'' [19] Tr. 566. Apparently interpreting the question as asking whether BCI 2 was taking the medications as prescribed, Dr. Christensen disagreed that this was a reasonable conclusion. *Id.* at 566–67. As he explained: ''How much? . . . I will stand by my statement [that] it's inappropriate for a physician to ignore asking whether or not someone's taking their medication as prescribed, especially if there's been a change in the pain level.'' *Id.* at 567. In response to a similar question by Respondent's counsel, Dr. Christensen testified that ''I believe that's insufficient information to assume they're [sic] taking the medication according to the prescribed schedule.'' *Id.*

Asked how often a physical exam is required of a patient the same age as BCI 2 (41) who complains of back pain and was receiving Norco and ''the more dangerous things have been ruled out,'' Dr. Christensen testified that DEA regulations require a visit ''every 90 days for a schedule II medication'' such as Norco.[20] *Id.* at 568. Dr. Christensen then testified that under DEA regulations, Respondent was not even required to conduct a visit with BCI 2 if she had previously received a prescription for Norco. *Id.* However, when then asked whether requiring the visit was ''[o]ver and above what [he] believe[s] is required [by] the standard of care in Michigan,'' Dr. Christensen testified that ''my interpretation of this patient is apparently different than [Respondent's], so I can't confirm your question.'' *Id.* at 569.

Asked by the CALJ if there is ''a different standard that prevails in Michigan than the one that's in the DEA regulations in regards to the requirement of a visit,'' Dr. Christensen testified that he believed ''the DEA prescriber manual . . . does give the 90-day interval as a requirement but also recommends that the visit be more frequent.'' *Id.* Then asked by the CALJ if Michigan's standard requires more frequent visits than every 90 days, Dr. Christensen testified: ''I don't believe we have a standard.'' *Id.*

Respondent's counsel then asked if it would have been ''okay for [Respondent] to prescribe controlled substances for a patient such as [BCI 2], assuming all the information you know about her, and not see her for 90 days?'' *Id.* at 569–70. After clarifying that Respondent's counsel was referring to the information available at BCI 2's visit with Respondent, Dr. Christensen testified: ''at that time, if you schedule a 90-day return visit and her urine drug screen came up negative for prescribed medications, you would need—I believe it would be appropriate to intervene.'' *Id.* at 570. Dr. Christensen testified that this would involve having her come back ''about a week later'' and doing a pill count. *Id.* Dr. Christensen then agreed that Respondent did not have the results of the March 19 drug test available to him [21] ''[a]t the time of the visit.'' *Id.*

On cross-examination, Respondent's counsel also questioned Dr. Christensen regarding his direct testimony questioning Respondent's notation in the visit note that ''[p]ain shoots to left hip.'' *Id.* at 571 (GX 11, at 35). As Dr. Christensen testified, the Investigator testified that when asked by Respondent ''to point to where it is real quick,'' (GX 7, at 3), she pointed to her lower right hip area and not her left hip. Tr. 285; *see also id.* at 572.

Respondent's counsel then asked: ''this statement here, shoots to left hip, if somebody's complaining of back pain, but when they're asked where it hurts and it manifests itself on the hip side, would that appear to you that the pain is shooting from one area to another area?'' *Id.* at 572. Dr. Christensen testified: ''If they complained of pain in both areas.'' *Id.* Then asked if ''that would be consistent with shooting pain,'' Dr. Christensen testified: ''If they said it was shooting. You could have pain in two separate locations. The shooting pain typically refers to nerve irritation or injury.'' *Id.* However, as found above, BCI 2 did not complain of shooting pain but said ''it just stays there.'' GX 7, at 3.

[18] Dr. Christensen correctly observed that BCI 2's pain history questionnaire was not dated. Tr. 563. While Dr. Christensen testified that the document was used by Dr. R., he did not know if it was completed before BCI 2's first or second visit with Dr. R. *Id.*

[19] Respondent's counsel's question simply asked: ''Is that to you an indication that she is taking her medication and needs refills of those medications?'' Tr. 566. He did not ask if BCI 2's statement was an indication that she was taking her medication as prescribed. *Id.*

[20] DEA's regulation does not, however, specify how often a patient who is being prescribed schedule II controlled substances must return for an office visit. *See* 21 CFR 1306.12. Rather, the regulation allows an individual practitioner to ''issue multiple prescriptions authorizing the patient to receive up to a 90-day supply of a Schedule II'' drug provided various conditions are met. *Id.* § 1306.12(b)(1). Indeed, the regulation states that ''[n]othing in [it] shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.'' *Id.* § 1306.12(b)(2).

[21] However, the results of the February 20 drug test, which was negative for all drugs including those that had previously been prescribed to her, would have been available on the date of BCI 2's visit, although Respondent claimed that he still did not have access to the results.

On re-direct, Dr. Christensen testified that Respondent's prescribing of 60 Norco and 60 Soma to BCI 2 was a departure from Dr. R.'s treatment plan which she instituted at the February visit, and that while there was some discussion as to why Respondent reduced the Soma prescription, there was ''no discussion'' as to why he increased the Norco prescription. *Id.* at 576. Dr. Christensen explained that the standard of care in Michigan includes ''the principle of informed consent'' and that this ''require[s] [that] if you're making a major change in a controlled substance, . . . to discuss it, [and] why you're recommending it.'' *Id.* at 577. Dr. Christensen testified that he found no evidence in the video that there was any discussion as to why Respondent increased the Norco. *Id.* He also testified that it appeared that Respondent was ''ignoring the planned taper by Dr. [R.]'' and that Respondent was trading an ''increase'' in the Norco prescription for a ''decrease'' in the Soma. *Id.*

While on re-cross, Dr. Christensen agreed that Respondent's decreasing of the Soma prescription was reasonable and this drug has an analgesic effect ''in short-term treatment,'' he testified that increasing BCI 2's Norco prescription ''to maintain the analgesic effect'' was not ''a rational therapeutic choice.'' *Id.* at 580. Then asked if he would rather have BCI 2 ''on Norco only and not Soma or Soma only and not Norco,'' Dr. Christensen answered ''[n]either.'' *Id.* at 580–81.

Respondent's Case

Respondent testified on his own behalf and called two other witnesses. The first of these was Dr. Carla Scott, a physician who is the medical director for the Wayne County Juvenile Detention Facility. Tr. 592. Dr. Scott, who did residencies in both internal medicine and pediatrics and is board certified in pediatrics, testified that her duties involve overseeing the facility's Health Services Department, including its Mental Health Department, and that the facility has a psychiatrist, two psychologists, three social workers, and two contractor physicians. *Id.* at 593–94. Dr. Scott also testified that she had ''worked as a professor for a year at Baylor.'' *Id.* at 593.

Dr. Scott testified that when she first moved back to Detroit she had worked at an outpatient public health clinic for ''[a]bout nine or 10 months, '' *id.* at 595, but had left because she did not like the way the clinic practiced medicine, as ''[t]hey really expected physicians to just pass out drugs'' as ''they got paid per capita'' and ''the more patients you saw, the faster you saw them, the more money the clinic made.'' *Id.* at 596. She explained that ''they felt like I spent too much time with the patients'' and because the clinic ''push[ed] the doctors to . . . just keep the patients coming in . . . we had a lot of patients there who were just drug-seeking.'' *Id.* at 596–97. She testified that she was ''threatened several times'' and ''had to have people removed from the clinic because'' she was not ''going to write the scripts.'' *Id.* at 597. Dr. Scott also testified that she ''clearly . . . learned something'' about identifying drug-seeking behavior, but acknowledged that ''I can't say that I was an expert.'' *Id.*

Dr. Scott testified that she went to medical school with Respondent and that they ''were pretty good friends'' until their residencies led them to go their ''separate ways.'' *Id.* at 598. Dr. Scott testified that she did not ''hear from [Respondent] for like 25 years,'' at which point Respondent called and asked her to supervise him pursuant to an order of the Michigan Medical Board.[22] *Id.* As Dr. Scott did not have any available positions, Respondent worked at the detention center as a volunteer. *Id.* According to Dr. Scott, the letter she received from the Board after she agreed to supervise Respondent ''was really vague'' as to what this entailed, so Dr. Scott asked him where else he was working and asked to see some of his patient charts. *Id.* at 599.

Respondent told Dr. Scott ''that he had opened up his own private pain clinic,'' which sent Dr. Scott's ''antennas up . . . because [she] ha[s] an issue about narcotics.'' *Id.* Dr. Scott asked to see these files and also went over to see his pain clinic. *Id.* Dr. Scott testified that she reviewed Respondent's charts and that after she fired one of the detention center's physicians, she hired Respondent as a part-time contractor. *Id.* at 603. Dr. Scott testified that her supervision began around April 2014 and lasted for one year, after which she wrote a letter to the Board. *Id.* at 604–05. She testified that she reviewed about 10 of his pain clinic charts, and that all of these charts were for patients who were receiving controlled substances. *Id.* at 605.

While Dr. Scott also reviewed hundreds of charts maintained by Respondent in the course of his employment at the detention center, she acknowledged that ''not a lot of these'' involve patients on controlled substances as ''we give out little to no narcotics at the . . . detention facility.'' *Id.* at 606. She subsequently testified that controlled substances for pain were ''probably less than five percent,'' and ''might even be less than two percent'' of the drugs that are prescribed at the detention facility. *Id.* at 607. While Dr. Scott testified that ''we have a lot of kids on'' controlled substances for psychiatric conditions, those prescriptions are ''always done by the psychiatrist'' unless the ''psychiatrist is absent'' and ''they're always reviewed.'' *Id.*

Dr. Scott testified that she ''did not have any problems with the'' the 10 charts she reviewed from Respondent's private pain clinic. *Id.* at 610. She did, however, ''talk to him about . . . making sure that he . . . sent people to physical therapy, and he already was.'' *Id.* Dr. Scott also testified that Respondent showed her that ''they had to bring in films'' and ''different things''; Dr. Scott did not, however, clarify what these ''different things'' involved. *Id.*

Asked what she was looking for in reviewing Respondent's charts, Dr. Scott testified:

> . . . just that as a physician that someone gave him a good reason why they needed narcotics and that he had a plan in place on how to get them off narcotics, that there were . . . other modalities offered to people, that you talked to them about other things that they could do for pain control, that you made sure that, because . . . pain is nebulous. It's very difficult. I mean, you can tell me you're in pain, but . . . how do I know that you really are?
>
> So you, as a physician, you're going to have to try to figure out how, you know, this person's saying they're in pain . . . so what are the best steps in terms of getting them out of pain . . . . and what kind, what other kinds of things can you do besides give them pills. And that's what I wanted to see.

Id. at 610–11. Dr. Scott also testified that she never had an issue with Respondent's charting of his treatment of patients at the detention facility. *Id.* at 611. However, Dr. Scott offered no testimony to even establish that Respondent treated any of the detention facility's patients with narcotics.[23] *Id.*

Next, Respondent called Ms. Tyanna Clemmons. *Id.* at 613. Ms. Clemmons

[22] Respondent had been accepted for a fellowship at Johns Hopkins but was required to have a permanent license and list the license number on the application. Tr. 628. According to Respondent, he then had only a temporary educational license so he listed his roommate's license number. *Id.* While Respondent did receive a permanent license, he was sanctioned for falsifying his application. *Id.* at 628–30; *see also id.* at 601–02. Respondent testified that he ''made a severe error in judgment'' and that he ''was dishonest on [his] application to Johns Hopkins.'' *Id.* at 628.

[23] Dr. Scott also testified that Respondent had an ''excellent'' work ethic at the detention facility, that she ''would like for him to continue to be an employee,'' and that he is ''providing a valuable service to the community.'' *Id.* at 611–12. None of this testimony is relevant in the public interest determination. *See Gregory Owens,* 74 FR 36751, 36756–57 (2009).

testified that she is a Certified Nursing Assistant and that she worked as Respondent's office manager at a clinic he owned in Flint, Michigan from March through July 2016. *Id.* at 616–17.

Ms. Clemmons testified that her duties involved ''scheduling patients, collecting documentation for patients,'' and managing the patient files. *Id.* at 617–18. Asked what type of documentation she would see in the patient files, she testified that ''all of our patients had to have imaging studies.'' *Id.* at 618. She also testified that ''[w]e had the patients sign their consent forms,'' that she ''would contact [the patient's] previous doctor to receive their documentation,'' and that Respondent ''always reviewed'' these records ''to see . . . what was exactly going on with the patient.'' *Id.* at 619.

Ms. Clemmons testified that the patients would undergo monthly urinalysis testing, that Respondent reviewed each drug test result, and that there was one patient, who tested positive for cocaine and was discharged by Respondent. *Id.* at 619–20. Asked how she knew that Respondent reviewed the drug test results, Ms. Clemmons testified: ''Because I specifically gave them to [Respondent]. He would have them inside of his file . . . [and] he always reviewed his files before his examination.'' *Id.* at 620.

Ms. Clemmons testified that Respondent would see ''about 10'' patients a day and that he would spend ''[r]oughly about 30 minutes'' with the patients, although the amount of time per visit varied and was ''[s]ometimes maybe 15 minutes, sometime maybe 45 minutes.'' *Id.* at 621. She also testified that a MAPS report would be obtained for every visit by a patient and that ''every time'' the report indicated that a patient was engaged in doctor shopping, the patient would be discharged. *Id.* at 622–23. Finally, she testified that patients were given referrals for ''outpatient therapy, chiropractors and . . . home care services.'' *Id.*

Finally, Respondent testified on his own behalf. *Id.* at 624–700. Respondent testified that he received his undergraduate degree from the University of Michigan and his medical degree from Wayne State University. *Id.* at 624. Following medical school, Respondent did both an internship and a residency in radiology at Howard University Hospital. *Id.* at 625. He also did a fellowship in interventional radiology at the Detroit Medical Center and in neuroradiology at the University of Arizona. *Id.* Respondent testified that his neuroradiology fellowship involved interpreting MRIs of the brain, face, neck and spine and that he was ''taught to evaluate pain pumps, kyphoplasty, vertebroplasty, nerve blocks, facet blocks, blood patches, [and] SI joint injections.'' *Id.* at 625. As for his fellowship in interventional radiology, Respondent testified that ''you get taught in pain management as far as facet blocks, epidural injections, nerve blocks, [and] pain pump evaluations.'' *Id.* at 627. He also testified that while he is board eligible, he is not board certified. *Id.*

Subsequently, Respondent testified that prescribing narcotics was ''[p]art of the training in each of [his] fellowships . . . because that's pain management.'' *Id.* at 647. Respondent also testified that he has had significant training in pain management. *Id.* at 648. He further testified that he has ''a few months'' of experience doing office-based pain management. *Id.* at 652.

Respondent testified that notwithstanding the earlier sanctions that were imposed on his medical licenses, all of his licenses are now ''free and clear'' with ''no restrictions.'' *Id.* at 631. Describing his work at the juvenile detention facility, Respondent testified that it involved doing physicals and minor procedures and ''not that much'' prescribing of narcotics. *Id.* Continuing, Respondent offered vague testimony that ''the anti-psychotics, stuff like that, I would say it's 10 to 20 percent because . . . the psychiatrists might not be there.'' *Id.* Respondent did not, however, identify what specific ''anti-psychotics'' he prescribed, and thus, there is no evidence as to whether this prescribing involved any drugs that are controlled substances.

Moving on to the allegations of the Show Cause Order, Respondent testified that in January 2015, he started doing *locum tenens* work for a company called Michigan Healthcare. *Id.* at 633. Respondent did one or two shifts at Michigan Healthcare before taking on *locum tenens* work at Dr. Vora's office.[24] *Id.* at 634.

Respondent testified that he understood his work at Dr. Vora's office would involve ''just see[ing] patients and that I'd be doing procedures since I have been fellowship trained.'' *Id.* at 635. He testified that he was not informed that he would specifically be seeing pain management patients. *Id.* Rather, he explained: ''The setup that it was supposed to be was that I'd go to Dr. Vora, Dr. Vora would set up [the] patient, and then I would see patients, because it was done through, at least the patient list was done through Dr. Vora's officer manager and the office manager at Michigan Healthcare.'' *Id.* Respondent testified that he worked ''two or three'' days total at Dr. Vora's practice. *Id.*

Respondent testified that his first day at Dr. Vora's practice was February 19, 2015, the day he saw BCI 1. *Id.* at 636. Respondent testified that ''[p]rior to showing up'' on that morning, he had no communication with either Dr. Vora or his staff other than a conversation he had ''on the way to Gladwin'' (the location of the office), when ''all [he] was told was that he was going to have some patients and . . . see patients.'' *Id.* at 636–37. He testified that he had ''zero'' opportunity to review the patient charts prior to arriving at the office and did not know how many patients he would see until he arrived and was provided with ''a patient list'' of 25 patients by the office manager. *Id.* at 637–38.

Respondent denied that he had access to the urine drug screen, stating that he did not ''have access through the EMR'' (the electronic medical records), because ''something was going on with [the office's] computer system.'' *Id.* at 638–39. Respondent testified: ''What Dr. Vora, his staff would do would give me these printouts of the charts and I would, you know, request.'' Continuing, Respondent testified: ''I had at the very least to have the MAPS, but I said I also need the urinalysis in order to see what's going on with the patients and to . . . have what I would think is a complete access to the medical records.'' [25] *Id.* Respondent further testified that he did not know if anyone could access the urine drug screen reports.[26] *Id.* at 639.

Asked whether he had ''any discussions with Dr. Vora prior to walking in for [his] first patient,'' Respondent initially testified: ''[z]ero . . . [o]ther than that he introduced

[24] Respondent testified that he became aware of the position at Dr. Vora's office through Michigan Healthcare. Tr. 635.

[25] Respondent also maintained that after his first day, he told the staff that he ''wanted to have access to the urinalysis'' and ''access to the[ ] full . . . EMR.'' Tr. 687. He also wanted ''advance knowledge of which patients [he] would be seeing'' and ''to have the MAPS there prior to . . . coming to the office.'' *Id.* Respondent testified that when he showed up on March 19, 2015, his instructions ''were not'' followed. *Id.*

However, later during cross-examination, Respondent testified that ''for every patient I got [a] MAPS'' and ''[b]efore I saw any patient I was able to get the MAPS'' without specifying that he got MAPS reports only on March 19, 2015. *Id.* at 692. While on cross-examination, Respondent reiterated that the UDSs were missing when asked what else was missing ''apart from the urinalysis records,'' ''I didn't think anything was missing off of the top of my head . . . .'' *Id.* at 693.

[26] Respondent also testified that he was told that he would have access to the urine drug screens ''either later on that day or even the next visit.'' Tr. 639.

himself to me.'' *Id.* However, when then asked by his counsel if Dr. Vora said ''anything about his prior treatment of the patients or a care plan,'' Respondent testified:

> Oh, yeah. He said that all the patients that I was receiving he had seen, he had established a patient management plan, and that he would, because they were his patients, that he would prefer that if there was [sic] any drastic changes that I'd discuss them with him.

Id.

As for why he did not refuse to see the patients until he could see their urine drug screen results, Respondent explained:

> Well, initially, number one, they're established patients. Number two is that it's not necessarily a requirement to have urine drug screens every time you see the patient. Therefore . . . you can have . . . you have judgment. It's up to me to decide whether okay, I'll see this patient, or it is definitely a . . . requirement for me to have the urine screens.

Id. at 640.

As for how he knew that the patients were established patients, Respondent testified that the office manager gave him ''printouts of the patient's prior history . . . what he had decided to treat.'' *Id.* Respondent testified that he took ''into account the patients' medical records and prior history.'' *Id.* Asked what he was looking at based on the videos which show him flipping through pages during BCI 1's visits and looking at a tablet during BCI 2's visit, Respondent testified that:

> [t]he second time I came, and I think that's with [BCI 2], it was all mixed up. It was that I got part of the medical records [that] were given to me through the printout that [the] office manager gave me, and then . . . I had limited access via . . . my computer, but because it was not the computer established with [the] EMR, I can [sic] only get access to certain areas of the patients' medical records.

Id. at 641. Respondent then testified that ''the paper was the prior medical history as far as that goes'' for BCI 1 and the tablet had ''some additional information on him.'' *Id.*

Addressing BCI 1's first visit, Respondent testified that he ''definitely'' recalled the visit and that ''[i]t was very memorable'' as ''the language that he was using was inappropriate. . . . I don't think that anybody talks to their physician, yeah, brother, yeah, you know, in a hot month he's going to be back. I think that no one talks like that, number one.'' *Id.* at 642. Respondent then explained that this language elicited this reaction because Gladwin, Michigan ''is like Leesburg[,] [Virginia] 40 or 50 years ago. So, when I go to Gladwin, it's like I am a sore thumb standing out.'' *Id.* at 642–43.

Asked by the CALJ what he meant by that, Respondent testified: ''I mean there are no African-American people there, period.'' *Id.* at 643. Then asked by his counsel if he was ''suggesting that [he was] treated differently because of [his] race by'' BCI 1, Respondent answered: ''There's no other way I could say it because I can't see him saying those things if I were not African-American.'' *Id.*

Asked by his counsel what he was ''feeling about some of the statements he made and whether . . . he was cooperating as a patient with'' him, Respondent testified that the ''main thing'' was ''to try to connect [with the patient] on a human level.'' *Id.* Continuing, Respondent explained that ''you want to talk to the patient, you want to let them know that you're a regular person, you're there to take care of them, you're there to help them out. You're no different than they are. So you want to initially just establish a rapport with the patient.'' *Id.* at 643–44. Respondent further explained that:

> [i]f they [sic] feel comfortable with you, then they [sic] can feel comfortable accepting what you advise them to do, your orders, whatever it may be. But if they [sic] feel that you are coming from a condescending type of attitude and you're there to bigfoot them, them . . . they [sic] might not be as receptive to following your plan.

Id. at 644.

Addressing some of the dialogue at BCI 1's first visit with him, Respondent was asked to explain ''[w]hat [was] going through [his] mind when'' BCI 1 said that ''I take Norco for my back and I take Xanax on the weekends.'' *Id.* Respondent testified:

> Multiple things. You know, I'm thinking that he was taking the Norco for his back pain. The Xanax is, which was for anxiety which was previously diagnosed from Dr. Vora's records, and that's my impression of that. I would think, . . . anybody would—I don't think it's unreasonable to say that when he says I'm taking Norco for my back that it's for back pain. I don't think that's unreasonable.

Id. at 644–45.

As for his subsequent question to BCI 1 (''Okay, so you have back pain, some anxiety?''), Respondent explained that, in his mind, he viewed BCI 1's answer of ''I guess,'' ''as an affirmative answer'' to his question, and that BCI 1was confirming the diagnoses of back pain and anxiety which were documented in the patient record. *Id.* at 645. Respondent also testified that prior to asking these questions, he had looked through the medical record and noticed both diagnoses, *id.* at 645, and that he believed the diagnoses were substantiated as he had no other reason to believe that the medical records were not legitimate as far as that goes.'' *Id.* at 645–46.

On questioning by the CALJ, Respondent testified that he knew ''[z]ero'' about Dr. Vora before going to the clinic and ''[t]hat's the way locums works.'' *Id.* at 646. The CALJ then asked Respondent if it was clear to him ''after [he] started seeing patients that [he was] doing pain management?'' *Id.* at 646–47. Respondent answered:

> At that time, I went specifically to Dr. Vora and I said this is not really what I had signed up for, was just to see pain patients. You know, however, as a matter of professional courtesy, I said okay, you know, I'll do this, but this is not what I signed up for. I want to do something else. This is not for me per se.

Id. at 647.

Suggesting that Respondent ''almost want[ed] to have it both ways'' in that ''[o]n the one hand,'' he was claiming that he ''didn't understand anything about this and . . . didn't know what to look for and . . . didn't have . . . access to the records[,] [b]ut on the other hand . . . talked about [his] extensive training . . . in the science of pain management,'' the CALJ asked ''which one is it?'' *Id.* at 649. Respondent answered: ''when you say access, that is like EMR . . . Electronic Medical Record. That is something that you have to have a password for. So I am reliant upon somebody else to provide those for me as far as that goes. And as far as my fellowship training, pain is just part of that. It's not the only thing about interventional radiology or neuroradiology.'' *Id.* at 649–50.

After Respondent acknowledged that as an interventional radiologist he would not perform a procedure (such as an epidural) in a complex case without the necessary tools, the CALJ again asked Respondent to explain why, given his training on prescribing opioids, he was willing to prescribe pain medication without ''more access'' to the medical records. *Id.* at 650–51. Respondent answered:

> . . . This is the way it works. With pain management, first, you have to go conservative . . . . You can go three months and you can see a patient and not perform a procedure. So that's not unreasonable. It's not unreasonable for a physician to see a patient for three months, and then after that three months, if they're just getting medication, you have to ask them if they want or if they are amenable to a procedure.
>
> So it's not like you—because that's not the way medicine works. You first start out conservatively. Then after you start out conservatively, if the pain is not being controlled, it's over three to four months,

then you offer them a procedure. If they are not amenable to the procedure, you are supposed to discharge or refer them to another physician or not see them. It's their choice really.

Id. at 651–52.

Returning to the dialog of BCI 1's first visit, Respondent testified that when he asked how long BCI 1 had his lower back pain and BCI 1 said ''Uh, probably 10 years,'' he believed that BCI 1 ''has chronic back pain, degenerative disc disease,'' that this is ''the most common low back pain diagnosis,'' and that he took BCI 1's statement ''as an affirmative.'' *Id.* at 653. Then asked what BCI 1's statement ''[m]ostly just stiff'' meant to him, Respondent answered:

> The thing when you're evaluating a patient, and again, this patient, he's stating that he's having difficulty reading. You do not want patients coming in using medical terminology. You want them to describe it. If they start using medical terminology during the office visit, you can get suspicious that they're either Googling it or they're trying to, you know, skew their answers to make it seem like they have these certain illnesses.

Id. at 653–54. Respondent added that ''mostly just stiff . . . means back pain'' to him. *Id.* at 654.

As for his questioning BCI 1 as to whether he had ''any muscle spasms with the pain'' and BCI 1's response to the effect that ''[i]t gets tight . . . so I don't know . . . I don't know what the word is for that. Stiff,'' Respondent testified that ''[t]o me, when you say tight . . . that it would be indicative of muscle spasm.'' *Id.* Respondent further explained that ''[t]here's various ways that people describe . . . low back pain and that's one of them, in addition to muscle spasm.'' *Id.* at 654–55. Respondent also asserted that BCI 1's failure to deny muscles spasms also played into his belief that he had muscle spasms. *Id.* at 655.

As for his asking BCI 1 if he ''ever ha[s] to walk with a limp because [his] pain gets so bad,'' Respondent explained that ''you want to know the degree of pain, if it's causing him a lifestyle type of change. You're trying to measure how severe the pain is.'' *Id.* As for BCI 1's answer (''No, I strut a little bit. Does that count?''), Respondent answered that he considered ''the language that he's using . . . strut. I would consider that a limp . . . at the very least abnormality of his gait.'' *Id.* As for why someone would answer his question this way, Respondent testified: ''[a]gain, I'm trying to get to know the patient. You know, for him, with him. I just took it as that he did walk with . . . he had abnormality of his gait.'' *Id.* at 655–56.

Addressing his asking BCI 1 if he had ever fallen and BCI 1's response (''I'm a grown-ass man. Yeah, I've fallen.''), Respondent testified that ''it's very difficult to determine what he's trying to say. However, when someone says that they have fallen, to me, that means muscle weakness.'' *Id.* Respondent then recited BCI 1's answer to his question as to whether the latter had lost muscle strength (''I mean, just getting older, what not. I don't know how you, you know.''), and Respondent's counsel asked if he felt ''like the patient in this case was being evasive or answering your questions in a straight-up manner?'' *Id.* at 656. Respondent answered: ''[t]here are multiple things that are going through my mind. Number one, I think he's trying to overcompensate. He's using a lot of slang. . . .'' *Id.*

Asked by the CALJ what he meant by his use of the term ''overcompensate,'' Respondent testified: ''Like I don't think that he's used to seeing somebody like myself . . . evaluate him.'' *Id.* at 657. Then asked by the CALJ what he meant by ''somebody like yourself,'' Respondent answered: ''An African-American. I don't think that he's . . . I just can't see a person who comes to a doctor's office using the language that he does.'' *Id.* at 657. Respondent then testified that he had issues with his race while at the Gladwin office as ''[t]here were times that some of the patients did not want me to touch them. So, you know, there's nothing I can do about that as far as that goes, so it can be, you know.'' *Id.* Continuing, Respondent testified that ''[t]he only reason why I could deduce is that . . . I'm African-American.'' *Id.* Respondent then testified that patients had not only said that they did not want him to touch him but also that they ''don't like black people.'' *Id.* Asked when he encountered these persons, Respondent testified that ''it happened twice. It happened right before [BCI 2], and then it happened . . . two or three patients prior to seeing [BCI 1] . . . [t]he second time.'' *Id.* at 658.

Respondent did not, however, assert that either BCI 1 or BCI 2 acted in this fashion. While Respondent further testified that this had an effect on how he interacted with patients, he then explained that this led him to ''want to . . . instill trust in the patients that I know what I'm doing and that I'm there to help them.'' *Id.*

As for the portion of BCI 1's first visit when Respondent asked the former to stand up and point to the part of his back that hurts the most, Respondent asserted that ''he had his coat on his arm'' and that he did not ''believe'' that BCI 1's testimony that he was wearing a coat during the physical exam ''to be credible.'' *Id.* at 658–59. Respondent also maintained that BCI 1 ''had some type of a thick shirt on'' and ''when I asked him to turn around, I lifted up his shirt and then I pressed on his back.'' *Id.* at 659. Respondent then reiterated that he ''personally press[ed] on [BCI 1's] back'' and testified that when he did so, he ''was feeling tightness, feeling . . . whether he was going to elicit some pain. That's it. Muscle tone, spasm.'' *Id.*

As found above, as BCI 1 pointed to his back, he stated ''[m]ostly just stiff.'' GX 3, at 9. Respondent testified that he took this statement ''as pain.'' Tr. 659. Respondent then explained that he asked BCI 1 if his pain shot anywhere or was localized because he ''wanted to see if [BCI 1] had any nerve symptoms'' which would indicate ''[t]hat he ha[d] radiculopathy'' or ''degenerative disc disease.'' *Id.* at 660.

As also found above, BCI 1 said that his pain was localized. GX 3, at 9. Respondent testified that this statement ''could mean a lot of things,'' including ''that he had a herniated disc,'' that ''it could be a degenerative disc, or it could be a narrowing of his neuroforamina.'' Tr. 660. Respondent then testified that ''[y]ou can feel a herniated disc'' but not degenerative disc disease with your finger. *Id.* at 660–61.

Respondent further testified that BCI 1's ''prior medical records'' showed that he had been referred to radiology. *Id.* at 660–61. However, while the ''Orders'' section of Dr. Vora's progress note for BCI 1's December 15, 2014 visit contain the notations ''Radiology'' and ''lumbar spine,'' GX 10, at 3, there is no radiology report in BCI 1's patient file.[27] *See generally* GX 10.

As for the abduction/adduction test he performed, Respondent explained that his purpose was to determine muscle strength and referred pain, which he explained that ''many times, if you lift up your arms, you also have to contract your low back, and sometimes that can lead to referred pain.'' *Id.* at 661–62. However, as the video shows, when Respondent performed this test on BCI 1, he did not ask if it caused pain and BCI 1 made no comment to the effect that it caused him pain.[28] *See* GX 3, at 9; *see also* GX 3, Video 5, at 14:48:06–12.

[27] Respondent also testified that ''you can'' see degenerative disc disease on an X-ray. Tr. 661. Respondent did not, however, testify that he reviewed either an X-ray or radiology report at either of BCI 1's visits.

[28] Likewise, when Respondent performed this test at BCI 1's second visit, he did not ask BCI 1 if it caused pain and BCI 1 did not complain that it caused pain. GX 5, at 4.

Respondent testified that he asked Respondent if he smoked because ''many times cigarette smokers . . . can have a problem with healing'' and ''if you're planning on doing a procedure, you want them to cease smoking.'' *Id.* at 662. As for why he asked BCI 1 if he used marijuana, Respondent explained that if BCI 1 had acknowledged marijuana use, you would want to know if he was certified by a physician and had been prescribed medical marijuana as well as to ''get a general history of his use of narcotics and drugs.'' *Id.* at 662–63.

Next, Respondent explained that he asked BCI 1 about his drinking because BCI 1 said ''he's on Xanax and he does it on the weekends, and he relates it to his drinking.'' *Id.* at 663. Respondent then explained that ''Dr. Vora had established a pain management plan for him,'' and ''reading through the notes . . . it [the reason for Xanax] could have been twofold, that he was worried about his anxiety, which was documented that he had anxiety, or he could have worried about whether he was going to go into DTs if he stopped drinking.'' *Id.* Respondent testified that he agreed with Dr. Christensen's statement that it is sometime appropriate to prescribe benzodiazepines to prevent delirium tremens. *Id.* at 663–64. Respondent also testified that, in his mind, BCI 1's statement that he took Xanax to keep him from drinking too much on the weekends meant that BCI 1 ''is not educated on . . . his medical condition,'' that ''[h]e doesn't really know what's going on,'' and that ''Dr. Vora has not told him exactly that he's on his Xanax for not only his anxiety but also for the potential of going into DTs.'' *Id.* at 664. Respondent added: ''And that's how I viewed reading the medical record.'' *Id.*

However, on cross-examination, Respondent testified that he did not create a plan to address BCI 1's drinking, because ''in [his] opinion, the plan was already enacted by Dr. Vora'' and that plan ''was giving the Xanax for both the possibility of DTs and the anxiety that that was documented in [the] prior notes.'' *Id.* at 690. Respondent denied that he left the issue ''unaddressed,'' explaining that his ''impression . . . was that if he felt that he was going into withdrawals [sic] he would take the Xanax.'' *Id.* at 691–92. Respondent admitted, however, that he never asked Dr. Vora if this was his plan. *Id.* at 692.

As for why he prescribed carisoprodol to BCI 1, Respondent testified that ''in his prior medical records, he was getting Baclofen . . . a muscle relaxant. That's the reason why I had given him the Soma.'' *Id.* Respondent then acknowledged that while Baclofen treats muscle spasms, it is not a controlled substance. *Id.* at 665.

Next, Respondent offered his explanation regarding BCI 1's statement that ''[t]hey're worth a lot of money on the street'' and his response of ''[t]hat's the whole point. They're pure. You know there is nothing cut down about them. So when you're selling them—its like you know—the person buying—legit.'' *Id.* at 665–666 (citing GX3, at 14). Asked what his reason was for engaging in this conversation, Respondent maintained: ''Well, it's just like educating him, you know, what is going on, why people are seeking this drug. It's not like I'm trying to tell him to go out and sell his drugs.'' *Id.* at 666. Then asked whether BCI I ''ever admit[ted] to [him] at any point during the interaction that he was diverting his controlled substances,'' Respondent answered: ''No. Let's see.'' *Id.*

As for what action Respondent felt was necessary after BCI 1's subsequent admission that he had traded drugs with his neighbor, Respondent testified that ''number one, you want to treat them, you want to give them a chance to be able to rectify their behavior as far as that goes. And if he continued with that, I would have just discharged him.'' *Id.* As for how he would have determined if BCI I had continued this behavior, Respondent answered: ''Number one, I would have, you know, inquired about that. And I would have seen, you know, as far as the MAPS, whatever he's taking in the MAPS.'' *Id.* at 667.

The CALJ then asked Respondent why he discussed the street value of the drugs that he was prescribing to BCI 1. *Id.* Initially, Respondent testified that ''it was an inappropriate conversation'' but that he ''was really trying to be accepted, trying to relate to the patient. It was a mistake.'' *Id.* Pressed on the issue, Respondent testified: ''Again, it's like, I mean, I can honestly just say that I just wanted for him to feel comfortable for me. It was wrong. I admit that. It was something that I should not have said.'' *Id.*

Asked by the CALJ whether he ''wanted to be [BCI 1's] friend,'' Respondent answered ''[y]es'' and added that he ''wanted'' BCI 1 to ''trust'' and ''like'' him and ''to be able to say that this guy cares about me, he wants to help me.'' *Id.* at 668. Then asked by the CALJ ''if you wanted him to be your friend, why would you tell him that he could sell his drugs on the street for a lot of money,'' Respondent answered: ''I wasn't telling him to sell the drugs.'' *Id.* The CALJ then said: ''You just told him what the value was,'' prompting Respondent's counsel to object that the question was argumentative in that it's ''premise . . . assumed that he was educating him on how to sell drugs on the street.'' *Id.* at 669. While the CALJ overruled the objection, he did not pursue this line of questioning. *Id.*

Respondent subsequently testified that he, and not BCI 1, had engaged in the conversation about the street value of the drugs. *Id.* at 670. However, he then revised his testimony to state: ''The thing I was trying to convey when I look at my statement is that I mention the pharmaceutical companies. And . . . I'd say most physicians feel that the pharmaceutical companies are . . . getting rich off the patients like himself. And that's why I said that.'' *Id.* at 670–71. Respondent then maintained that when he stated that ''these scripts . . . that you are going to get would be like 6 or 7 hundred dollars. You know the pharmaceutical company are making bank,'' he was referring to the pharmaceutical value and not the street value. *Id.*

Addressing the note he prepared for BCI 1's first visit, Respondent testified that he wrote that Respondent had degenerative disc disease for approximately ten years because BCI 1 ''had it [low back pain] for 10 years'' and ''[i]t would be consistent with degenerative disc disease of his low back.'' *Id.* at 671. As for why he noted that BCI 1 had associated muscle spasm, Respondent explained that BCI 1 ''was getting Baclofen. So the mere fact that he's getting Baclofen from his prior medical records, I would say that the Baclofen which is for muscle spasm.'' *Id.* at 672. Respondent also maintained that ''[t]he physical exam that Dr. Vora gave and . . . my examination'' were other reasons why he thought BCI 1 could have been getting Baclofen. *Id.*

As for the notation that BCI 1 walked with a ''slight limp,'' Respondent testified that ''to me, it looked like he walked with a limp.'' *Id.* As for why he noted ''moderate point tenderness,'' Respondent maintained that ''when I palpated or pushed on his lower back, I thought that he had moderate point tenderness that was localized.'' *Id.* Respondent also maintained that he read Dr. Vora's medical records for BCI I and ''agreed with his management and I was just going to continue that until I got to know the patient better.'' *Id.* at 673.

After stating his diagnoses and noting that BCI 1 ''was previously diagnosed with'' anxiety, Respondent explained that he continued the Norco and Xanax prescriptions ''[f]or the reasons that I previously mentioned'' and that BCI 1

''had documented anxiety and I was worried about him going into DTs.'' *Id.*

Turning to BCI 1's second visit, as found above, after exchanging pleasantries, Respondent asked: ''So how is everything been going with your pain?'' and BCI 1 replied: ''[g]reat, yup, everything is cool?'' GX 5, at 4; Tr. 674. Respondent testified that, in his mind, BCI 1's answer meant ''that the regimen or the plan of his management is working. You want the patient to not have any back pain, or you don't want them to, or the pain to be more tolerable.'' Tr. 674. Respondent also testified that he asked BCI 1 to walk back and forth to see if he had a limp and that he ''noticed a limp.'' *Id.*

As for why Respondent had BCI 1 point to where it hurt in his back, Respondent testified that he did this ''[j]ust to gauge . . . the level of his back pain and to see if he had any muscle tightness, the tone, to see if it shot anywhere, if he had any progression of his disease.'' *Id.* Respondent maintained that at this point, he palpated BCI 1's back, and when asked if he did it through BCI 1's clothing, Respondent testified that ''[w]hat I would do is I'd lift the back of his shirt up and then I'd push on his back.'' *Id.* at 675.

As for BCI 1's statement that ''I got stiffness pretty much like right down there,'' GX 5, at 4, Respondent explained that he interpreted this as ''he has back pain. I'm specifically asking him about back pain. I'm, you know, asking him about that and, to me, when he responds, to me, that means that he has low back pain.'' Tr. 675. As for why he performed the arm adduction and abduction tests, Respondent again testified that he did these tests ''to see if he had referred pain, to check out his upper body musculature, and to see if he had good muscle tone. *Id.*

As found above, Respondent then asked BCI 1 to ''rate [his] pain on a scale of one to ten today''; BCI 1 responded: ''I am good today. I am good today.'' GX 5, at 4. Asked why he still prescribed medications to BCI 1 ''even though he's just failed to give you a pain score,'' Respondent explained:

> Well, number one, pain waxes and wanes. So he has had this chronic pain for 10 years. This might be just a time that when he comes into the office he might have just taken his medication, that he's okay.
>
> Usually . . . if the patient takes the medication prior to coming to the office . . . he won't have as much pain.

Tr. 676.

Next, Respondent testified that on March 19, 2015, he still ''did not'' have access to the urine drugs screens because ''[t]hey still were saying that there was a computer issue.'' *Id.* Respondent maintained that he complained about his lack of access to the urine drug screens and ''said that I needed to have these and that . . . that's part of the treatment for the patient.'' *Id.* at 676–77. As for why he just did not refuse to see patients that day, Respondent explained that ''it's not a requirement necessarily to have the urinalysis, but . . . for him, but the key to me about that is to make sure that I eventually do get it.'' *Id.* at 677. Respondent, however, testified that he never saw a urinalysis test result for BCI I. *Id.* at 678.

Noting Dr. Christensen's testimony that BCI 1's second visit with Respondent ''was only about two minutes,'' Respondent's counsel asked him why it was ''so brief.'' *Id.* at 677. Respondent testified that he ''had a[n] incident with a patient prior to [BCI 1], and . . . I'm a human being . . . as far as that goes,'' and that the incident involved ''a patient that did not want me to examine her'' because of his race. *Id.* Asked why this would affect his treatment of BCI 1, Respondent answered: ''Well, I mean, again, it's hard to describe when somebody doesn't think of you as an equal, and that affects you.'' *Id.* Respondent then asserted that ''[j]ust in general from just the language that [BCI 1] used during the examination,'' he did not feel like BCI 1 was treating him ''as an equal.'' *Id.* at 678.

Addressing Dr. Christensen's testimony that he did not see evidence that Respondent did a cranial nerves examination yet documented having done so in the March 19 visit note, Respondent's counsel asked: ''[w]hy put down in the record that his CN were intact . . . ?'' *Id.* Respondent answered:

> Okay. First of all, you can indirectly evaluate the cranial nerves. Like the facial nerve, if he has a facial palsy . . . one his cheeks is [sic] droopy, or his eyelid is not, it's like droopy also, that is indication of an abnormality of one of the cranial nerves. If he . . . has speech patterns similar to somebody who is deaf, that would be indicative of a cranial nerve issue. So that's why. That's it. So you don't necessarily have to, in order to say that the cranial nerves are intact, to directly palpate.

Id. at 679.

As found above, Respondent also documented in the March 19 visit note ''2+ pulses throughout'' and Dr. Christensen testified that neither the video nor the transcript show that Respondent took BCI 1's pulses. GX 10, at 32; Tr. 433–35. Asked why he made the notation, Respondent testified: ''On the radial pulse is the pulses in the wrist. Now, when I have the patient lift up their arms, I'm at the same time pinching their wrist and I'm feeling their pulse.'' Tr. 678–79.

As for BCI 2, Respondent testified that he reviewed her medical file including the records created by both Dr. Vora and Dr. R. prior to treating her and that he had no reason to not believe the statements in her medical record. *Id.* at 680. He further testified that he ''reviewed [Dr. R.'s] physical and . . . what she gave the patient'' and the pain clinic history questionnaire. *Id.* at 681.

As found above, after exchanging pleasantries, Respondent asked BCI 2 ''to tell [him] what's going on'' and she replied: ''just here for refills.'' *Id.* Asked what BCI 2's response indicated to him, Respondent testified: ''I mean, it's subjective as far as that goes, it's depending on, you know, I perceive it as that she came in to get her examination and that she was coming in there to have her pain evaluated.'' *Id.* at 681–82. Respondent also testified that BCI 2's statement that ''I feel great today'' meant to him ''that she's saying to me that the management that she's getting is working.'' *Id.*

Respondent then testified that he believed that he knew BCI 2's pain score from her previous visit with Dr. R. and that based on the Pain Clinic History Questionnaire, he believed her pain was ''at least a 4,'' which was the rating BCI 2 listed on the form as her usual pain level. *Id.* at 683; *see also* GX 11, at 23.

As for his decision to increase the Norco and decrease the Soma from the quantities prescribed by Dr. R., Respondent testified that ''she was getting 120 of the Soma,'' and in his opinion, that was ''too high.'' *Id.* at 683. Respondent further testified that ''Soma can be an anti-anxiety medication'' and ''can cause you to become drowsy,'' and that, in his understanding, ''the most that you can prescribe within a 30-day period is 90'' and ''she's overmedicated.'' *Id.* Respondent further maintained that he ''looked at the MAPS and the MAPS said that she had gotten Xanax the prior month. And that, since I was seeing her, I was not going to write the prescription for Xanax.'' *Id.* at 683–84. Respondent added that he ''didn't notice a refill'' in the MAPS report and that he ''didn't realize you could get refills.'' *Id.* at 684.

Respondent's counsel then pointed out that ''the MAPS report doesn't show the prescription by Dr. [R.] for Xanax'' and asked if he ''look[ed] at another MAPS report somewhere?'' *Id.* Respondent testified: ''No, I thought that that was the whole point. I wasn't going to, no matter what, I wasn't going to prescribe her Xanax.'' *Id.*

As for why he increased BCI 2's Norco, Respondent testified: ''that the

reason why she's on such a high dose of Soma is that she's trying to control the pain through the Soma, and I just thought that, in my judgment, that was too much to be giving her at that time.'' *Id.* Respondent then testified that he thought BCI 2's Soma prescription was dangerous, ''so [he] decreased it to 60 and . . . increased the Norco to 60, which she prior had been getting from Dr [R].'' *Id.* at 685. Respondent also maintained that he was aware that Dr. R. had previously reduced BCI 2's Norco prescription to 5 dosage units. *Id.*

Respondent was then asked by his counsel why he increased the Norco prescription ''if [he] saw that the other doctor had prescribed less?'' *Id.* Respondent answered:

> Well, the point being was that generally you want to, if you're going to wean a patient off of a medication, again, it's unique to each patient, but you can wean like 10 percent a week, 10 percent a month, but you have to gauge, or the patient has to be monitored. . . . And with that, I wanted to make sure that her pain was under control.

Id.

Respondent further testified that after his first day in Dr. Vora's office, he tried to contact a psychiatrist because ''many of these patients needed to be followed for the Xanax, for the anti-anxiety diagnosis.'' *Id.* at 685–86. Respondent testified that there was ''no one'' in the phonebook for Gladwin and while he ''Google[d] psychiatrists in'' other cities, ''[t]here's this big procedure when you're trying to get a patient to see a psychiatrist'' which involves ''arrang[ing] an appointment with the psychologist'' who evaluates whether the patient needs to see a psychiatrist. *Id.* at 686. Respondent testified that he made these phone calls because he ''wasn't going to continue to see the patients that were on Xanax'' and ''did not want to keep prescribing Xanax.'' *Id.*

Respondent also testified that because his instructions regarding obtaining access to the EMR and the urine drug screen results were not followed, he ''told them that I cannot do this anymore.'' *Id.* at 687. Asked if he ''recognize[d] . . . that there were some deficiencies in how [he] treated the patients at Dr. Vora's office,'' Respondent answered ''yes.'' *Id.* at 688. As for what he could ''do better,'' Respondent said ''cut down the number of patients,'' ''make sure'' he had ''full access to all the records,'' ''make sure that everything was set up for, you know, I needed to offer them you know, procedures,'' and to ''let the patients know that there was going to be an African-American there and that if they didn't want to come, that's their choice.'' *Id.* at 688–89. Respondent also testified that he is no longer working as a *locum tenens* because he has not found a ''satisfactory'' job. *Id.* at 689. He then explained that ''I want to do radiology'' and ''I do not really want to do pain management. . . . But right now the only thing that's open is pain management.'' *Id.* Asked if it is his ''desire to ever engage in office-based pain management treatment again,'' Respondent answered: ''That's not my goal at all.'' *Id.*

On cross-examination, the Government asked Respondent why he ''still prescribed a 30-day supply of controlled substances'' rather than ''a lesser day . . . supply'' at each of the three undercover visits ''given [his] uncomfortableness with not having [the] urinalysis results.'' *Id.* at 693. Respondent answered: ''[f]irst of all, you can never just have the patient go cold turkey for any type of narcotic.'' *Id.* Government counsel reminded Respondent that he ''didn't say cold turkey'' and he had ''said a lesser number.'' *Id.* Respondent answered:

> So what would they, if I'm not going to be there or they're not going to be seen for a month, what would they do—from my standpoint, this is rhetorical, is that if you do give a lesser amount . . . they run out. Then they're going to self-medicate if they run out and they don't have access. And then if the patient runs out, they go into withdrawals, they might be driving, then they might cross the median, they could kill somebody. So that's my concern of like saying okay, I'm going to just give you 10.''

Id. at 693–94.

When the Government suggested that Respondent could have ''had the patient return or . . . could have phoned in the additional pills later,'' Respondent testified that ''[y]ou can't phone in Norco'' and that ''he'd go in[to] withdrawal from the Norco.'' *Id.* at 694. Respondent then testified that he ''would have to weigh the costs and the benefits'' and that if ''a patient has been on it for an extended period of time and then you decide to just stop them, . . . they're going to have withdrawals.'' *Id.* After the Government asked if ''it would be too inconvenient for them to return,'' Respondent answered: ''It's like this is—you guys know where you're at. It's Gladwin as far as that goes.'' *Id.* at 694–95. Then asked how hard it would be ''to get back to the doctor's office'' if ''only 3,000 people'' live in Gladwin, Respondent answered: ''It only takes one accident. That's it. I'm just saying for me, I just used my—I did not want patient to go into withdrawals. I didn't feel comfortable not giving him medication.'' *Id.* at 695.

Addressing BCI 1's February 19, 2015 prescriptions, the Government asked Respondent whether he believed, at the time he issued each of the prescriptions, that the prescriptions were ''for a legitimate medical purpose within the usual course of professional practice and the Michigan standard of practice?'' *Id.* Respondent generally testified that he did believe the prescriptions were lawful, although he acknowledged that ''[i]t was a mistake'' to prescribe Soma to BCI 1. *Id.* at 696. Respondent then explained that by this, he meant that he ''wasn't as aware of the holy trinity''; he further explained that with the patients that ''I'd come in contact with, this holy trinity was not that . . . common for me . . . So I wasn't that familiar with that. So, when I wrote these out, I wrote it out in good faith. I was not as knowledgeable as I should have been.'' *Id.* at 696–97.

While Respondent admitted that it was a mistake to prescribe Soma to BCI 1 because he was on a different non-controlled muscle relaxant, he again testified that if ''I had been more knowledgeable about the holy trinity, I would not have given him the Soma.'' *Id.* at 697. Respondent nonetheless believed that prescription was issued for a legitimate medical purpose and in the usual course of professional practice ''[b]ased on the medical records from Dr. Vora and his history he gave me.'' *Id.*

Respondent offered testimony to the same effect with respect to the three prescriptions he issued to BCI 1 at the March 19, 2015 visit, testifying that he believed that he wrote the prescriptions ''in good faith'' and ''[b]ased on Dr. Vora's history, what he told me.'' *Id.* at 698–99. While Respondent again admitted that the Soma prescription was a mistake, he testified that he ''wrote it under good faith,'' that ''I wasn't trying to write something that was illegal,'' and that ''I wasn't trying to have somebody get something that . . . they shouldn't have gotten.'' *Id.* at 699.

Finally, Respondent testified that both the Norco and Soma prescriptions he issued to BCI 2 were for a legitimate medical purpose, and within both the usual course of professional practice and the Michigan Standard of Practice. *Id.* at 699–700.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that ''[t]he Attorney General may deny an application for [a practitioner's] registration . . . if the Attorney General determines that the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(f). With respect to a practitioner, the Act requires the consideration of the

following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that ''I may rely on any one or a combination of factors, and may give each factor the weight [I] deem [ ] appropriate in determining whether . . . an application for registration [should be] denied.'' *Paul H. Volkman,* 73 FR 30630, 30641 (2008) (citing *id.*), *pet. for rev. denied, Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222 (quoting *Hoxie,* 419 F.3d at 482)).[29]

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for denial of an application pursuant to 21 U.S.C. 823(f) are met. 21 CFR 1301.44(d). However, once the Government has made a *prima facie* showing that issuing a new registration to the applicant would be inconsistent with the public interest, an applicant must then present sufficient mitigating evidence to show why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (citing cases), *pet. for rev. denied,* 300 Fed. Appx. 409 (6th. Cir. 2008); *see also MacKay,* 664 F.3d at 817.

Having considered all of the factors, I find that the Government's evidence with respect to Factors Two and Four satisfies its *prima facie* burden of showing that granting Respondent's application would be inconsistent with the public interest.[30] I further find that Respondent has failed to produce sufficient evidence to rebut the Government's *prima facie* case.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). *See also* Mich. Comp. Laws § 333.7333(1) (''As used in this section, 'good faith' means the prescribing of a controlled substance by a practitioner licensed under section 7303 in the regular course of professional treatment to or for an individual who is under treatment by the practitioner for a pathology or condition other than that individual's physical or psychological dependence upon or addiction to a controlled substance, except as provided in this article.''); *id.* § 333.7401 (''A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than a legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner . . . .'').[31]

Under the CSA, it is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to act ''in the usual course of . . . professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *See United States* v. *Moore,* 423 U.S. 122, 142–43 (1975); *United States* v. *Lovern,* 590 F.3d 1095, 1100–01 (10th Cir. 2009); *United States* v. *Smith,* 573 F.3d 639, 657 (8th Cir. 2009); *see also* 21 CFR 1306.04(a) (''An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions

[29] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration or the denial of an application. *MacKay,* 664 F.3d at 821.

[30] As to Factor One, while on December 13, 2016, the Michigan Board imposed a summary suspension of Respondent's medical license, on February 16, 2017, the Board entered into a Consent Order and Stipulation which dissolved the summary suspension while limiting Respondent's authority to ''obtain, possess, prescribe, dispense or administer any . . . controlled substance . . . except in a hospital or other institutional setting.'' However, while Respondent does possess limited state authority as required to be registered under 21 U.S.C. 823(f), the Board has not made a recommendation to the Agency in this matter. Moreover, as the Agency has long held, this partial restoration of Respondent's state authority is not dispositive of the public interest inquiry. *See Mortimer Levin,* 57 FR 8680, 8681 (1992) (''[T]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.''). *See also* 21 U.S.C. 802(21) (defining ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice'').

To be sure, the Agency's case law contains some older decisions which can be read as giving more than nominal weight in the public interest determination to a State Board's decision (not involving a recommendation to DEA) either restoring or maintaining a practitioner's state authority to dispense controlled substances. *See, e.g., Gregory D. Owens,* 67 FR 50461, 50463 (2002) (expressing agreement with ALJ's conclusion that the board's placing dentist on probation instead of suspending or limiting his controlled substance authority ''reflects favorably upon [his] retaining his . . . [r]egistration, and upon DEA's granting of [his] pending renewal application''); *Vincent J. Scolaro,* 67 FR 42060, 42065 (2002) (concurring with ALJ's ''conclusion that'' state board's reinstatement of medical license ''with restrictions'' established that ''[b]oard implicitly agrees that the [r]espondent is ready to maintain a DEA registration upon the terms set forth in'' its order).

Of note, these cases cannot be squared with the Agency's longstanding holding that ''[t]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Levin,* 57 FR at 8681. Indeed, neither of these cases even acknowledged the existence of *Levin,* let alone attempted to reconcile the weight it gave the state board's action with *Levin.* While in other cases, the Agency has given some weight to a Board's action in allowing a practitioner to retain his state authority even in the absence of an express recommendation, *see Tyson Quy,* 78 FR 47412, 47417 (2013), the Agency has repeatedly held that a practitioner's retention of his/her state authority is not dispositive of the public interest inquiry. *See, e.g., Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).

As to Factor Three, I acknowledge that there is no evidence that Respondent has been convicted of an offense under either federal or Michigan law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d at 822. The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

As for Factor Five, the Government made no allegations that implicate Factor Five. Nor did it claim that Respondent's false testimony on certain issues implicates Factor Five.

[31] As the CALJ noted, the Government did not cite this provision in the Show Cause Order or in its post-hearing brief. R.D., at 73–74. I find, however, that this provision imposes the same standard as 21 CFR 1306.04(a).

of law relating to controlled substances.''). As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *Moore,* 423 U.S. 122, 135, 143 (1975)).

Both this Agency and the federal courts have held that establishing a violation of the prescription requirement ''requires proof that the practitioner's conduct went 'beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.' '' *Laurence T. McKinney,* 73 FR 43260, 43266 (2008) (quoting *United States* v. *McIver,* 470 F.3d 550, 559 (4th Cir. 2006)). However, as the Sixth Circuit (and other federal circuits have noted), '' '[t]here are no specific guidelines concerning what is required to support a conclusion that an accused acted outside the usual course of professional practice. Rather, the courts must engage in a case-by-case analysis of the evidence to determine whether a reasonable inference of guilt may be drawn from specific facts.' '' *United States* v. *August,* 984 F.2d 705, 713 (6th Cir. 1992) (citations omitted) (quoted in *United States* v. *Singh,* 54 F.3d 1182, 1187 (4th Cir. 1995)).

Thus, in *Moore,* the Supreme Court held the evidence in a criminal trial was sufficient to find that a physician's ''conduct exceeded the bounds of 'professional practice,' '' where the physician ''gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' ''took no precautions against . . . misuse and diversion,'' ''did not regulate the dosage at all'' and ''graduated his fee according to the number of tablets desired.'' 423 U.S. at 142–43.

However, as the Sixth Circuit has explained, ''[o]ne or more of the foregoing factors, or a combination of them, but usually not all of them, may be found in reported decisions of prosecutions of physicians for issuing prescriptions for controlled substances exceeding the usual course of professional practice.'' *United States* v. *Kirk,* 584 F.2d 773, 785 (6th Cir. 1978). *See also United States* v. *Hooker,* 541 F.2d 300, 305 (1st Cir. 1976) (affirming conviction under section 841 where physician ''carried out little more than cursory physical examinations, if any, frequently neglected to inquire as to past medical history and made little to no exploration of the type of problem a patient allegedly'' had and that ''[i]n light of the conversations with the agents, the jury could reasonably infer that the minimal 'professional' procedures followed were designed only to give an appearance of propriety to [the] unlawful distributions''); *United States* v. *Tran Trong Cuong,* 18 F.3d 1132, 1139 (4th Cir. 1994) (holding evidence sufficient to find physician prescribed outside of professional practice in that ''in most cases the patients complained of such nebulous things as headaches, neckaches, backaches and nervousness, conditions that normally do not require . . . controlled substances,'' physician was ''aware that some of the [ ] patients were obtaining the same drugs from other doctors,'' ''[m]ost of the patients were given very superficial physical examinations,'' and patients were not ''referred to specialists''); *United States* v. *Bek,* 493 F.3d 790, 799 (7th Cir. 2007) (upholding convictions; noting that the evidence included ''uniform, superficial, and careless examinations,'' ''exceedingly poor record-keeping,'' ''a disregard of blatant signs of drug abuse,'' ''prescrib[ing] multiple medications having the same effects . . . and drugs that are dangerous when taken in combination''); *United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006) (''[T]he *Moore* Court based its decision not merely on the fact that the doctor had committed malpractice, or even intentional malpractice, but rather on the fact that his actions completely betrayed any semblance of legitimate medical treatment.''); *United States* v. *Joseph,* 709 F.3d 1082, 1104 (11th Cir. 2013) (upholding conviction of physician where ''record establishe[d] that [physician] prescribed an inordinate amount of certain controlled substances, that he did so after conducting no physical examinations or only a cursory physical examination, that [physician] knew or should have known that his patients were misusing their prescriptions, and that many of the combinations of prescriptions drugs were not medically necessary'').[32]

The CALJ found that Respondent violated 21 CFR 1306.04(a) with respect to each of the prescriptions issued to both investigators. I agree. Even considering the evidence that Respondent practiced at the clinic on a *locum tenens* basis and that both investigators had previously been seen by other physicians at the clinic, who documented findings in the medical records that, in some respects, tended to support the diagnosis of conditions that may justify the prescribing of controlled substances, I nonetheless conclude that the weight of the evidence supports the conclusion that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he issued the prescriptions. 21 CFR 1306.04(a).

BCI 1's Prescriptions

With respect to BCI 1's first visit, the CALJ credited Dr. Christensen's testimony that the combination of drugs that Respondent prescribed (Norco, Xanax and carisoprodol), otherwise known as the Holy Trinity, has both a very high abuse potential because of its ''euphoric'' effects and creates a high risk of ''respiratory depression,'' especially in a patient who admits to drinking alcohol. Tr. 397–98. The CALJ also credited Dr. Christensen's testimony that, under the standard of care, the Investigator's admission of alcohol use required Respondent to not prescribe the Xanax.[33] Tr. 395–96. While Respondent agreed with Dr. Christensen's testimony that prescribing Xanax is medically appropriate to prevent delirium tremens, a condition caused by withdrawal from alcohol, and testified that he was simply following Dr. Vora's plan, which he believed involved prescribing Xanax to both treat the Investigator's anxiety and to prevent DTs, Respondent admitted that he never asked Dr. Vora if he was prescribing Xanax for the latter purpose. *Id.* at 692.

Moreover, even though Dr. Vora's progress notes list a diagnosis of anxiety, and Dr. Christensen testified that a physician can trust the medical documentation of another physician if

[32] However, as the Agency has held in multiple cases, ''the Agency's authority to deny an application [and] to revoke an existing registration . . . is not limited to those instances in which a practitioner intentionally diverts a controlled substance.'' *Bienvenido Tan,* 76 FR 17673, 17689 (2011) (citing *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998)); *see also Dewey C. MacKay,* 75 FR at 49974. As *Caragine* explained: ''[j]ust because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify'' the revocation of an existing registration or the denial of an application for a registration. 63 FR at 51601.

''Accordingly, under the public interest standard, DEA has authority to consider those prescribing practices of a physician, which, while not rising to the level of intentional or knowing misconduct, nonetheless create a substantial risk of diversion.'' *MacKay,* 75 FR at 49974; *see also Patrick K. Chau,* 77 FR 36003, 36007 (2012).

[33] Dr. Christensen also testified that a physician in primary care should refer a patient who admits to alcohol use to an addiction specialist or counselor. Tr. 396. Dr. Christensen did not, however, testify as to whether the standard of care would require a pain management specialist to refer the patient, and, in any event, it is unclear whether Respondent should be treated as a primary care physician or as a pain management specialist.

''the elements of a diagnosis are met,'' he did not agree ''with any diagnosis of anxiety.'' *Id.* at 516–17. Dr. Christensen also testified that BCI 1's statement that he ''take[s] Xanax on the weekends . . . does not appear to be [that of] someone who's complaining about an anxiety diagnosis who's being prescribed Xanax for a documented anxiety disorder.'' *Id.* at 379. And Dr. Christensen testified that if there was a diagnosis of anxiety disorder, ''a reasonable practitioner . . . would want to know'' what treatments had been tried. *Id.* at 381. However, Respondent made no such inquiry.

As for Respondent's prescribing of carisoprodol at the first visit, a muscle relaxant which is also a schedule IV drug with sedative effects and Respondent's statements that he was going to prescribe this drug for muscle spasms, Dr. Christensen testified that muscle spasms would be diagnosed by palpating the patient but that he did not see evidence that Respondent had done so. Tr. 399. By contrast, Respondent, in addition to asserting that he interpreted BCI 1's statements that his back was stiff with the presence of muscle spasms, also testified that he lifted up BCI 1's shirt and palpated his back at this visit. *Id.* at 659. However, BCI 1 testified that neither he nor Respondent lifted up the clothing that he was wearing and Respondent never palpated his back. *Id.* at 175. Yet Respondent documented in the visit note a physical exam finding of ''[m]oderate point tenderness to low back.'' GX 10, at 31. Moreover, Respondent, at another point in his testimony, explained that he prescribed carisoprodol because Dr. Vora had previously prescribed Baclofen, a non-controlled muscle relaxant to BCI 1. Tr. 665. He also testified that the prescription was a ''mistake.'' *Id.*

Dr. Christensen opined that the Soma prescription was ''not appropriate.'' *Id.* at 420. He explained that the drug is ''indicated for short-term treatment of muscle spasms,'' but that ''there is no documentation of this'' condition. *Id.* Dr. Christensen further explained that Soma was ''contraindicated with this patient's history.'' *Id.*

Notably, the CALJ found BCI 1's testimony ''fully credible'' as to all issues. R.D. 14 By contrast, the CALJ found Respondent's testimony on the issue of why he prescribed the carisoprodol, to be ''not just a little confusing'' and ''not convincing.'' *Id.* at 54. Based on the CALJ's credibility findings, I find that Respondent's testimony that he lifted up BCI's clothing and palpated BCI 1's back was false, that Respondent had no basis for documenting in the visit note a finding of moderate point tenderness, and that Respondent falsified BCI 1's medical record.

Thus, notwithstanding that BCI 1's records showed that Dr. Vora had diagnosed him with muscle spasms and the somewhat ambiguous statements made by BCI 1 as to his condition, I conclude that the weight of the evidence supports the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate purpose when he prescribed carisoprodol to BCI 1. 21 CFR 1306.04(a). While Dr. Christensen testified that a physical exam is not required at a follow-up visit and a subsequent physician can rely on a diagnosis of another physician if there is evidence that a pertinent examination had previously been performed, I reject Respondent's defense that he reasonably relied on the examinations as documented by Dr. Vora and that while ''we now know'' that Dr. Vora's records ''were largely false, Respondent had no indication that this was the case.'' *See* Resp.'s Post-Hrng. Br. 30.

First, as found above, BCI 1 told Respondent that he had asked Dr. Vora for a couple of extra pills, and based on the statements Respondent made regarding the quantity of the prescriptions (66 pills for both Norco and Xanax) written by Vora, I find that Respondent clearly knew that Vora had given extra pills to BCI 1, thus calling into question the legitimacy of Vora's prescribing as well as his recordkeeping. Moreover, Respondent falsified the visit note to indicate a finding of moderate point tenderness, and in this proceeding, he falsely testified that he lifted up BCI 1's clothing and palpated his back. Unexplained by Respondent is why, if he reasonably relied on Vora's records and had ''no indication'' that they ''were largely false,'' he proceeded to create his own set of false physical exam findings and gave false testimony at the hearing. Indeed, Respondent's testimony and his falsification of BCI 1's visit note support the conclusion that Respondent did not merely make a mistake when he prescribed carisoprodol but that he knowingly diverted controlled substances when he prescribed the drug (as well as alprazolam and Norco) to BCI 1. 21 CFR 1306.04(a).

As for the Norco prescription, Dr. Christensen noted that on his initial intake form, BCI 1 had listed ''refills'' as his reason for visit and that on the medical history form, BCI 1 did not check off any symptom listed on the form, let alone those that are relevant in assessing lower back pain. Tr. 410; *see also* GX 10, at 17, 19. He further explained that the standard of care required that Respondent obtain a family history of psychiatric and substance abuse disorders to rule out substance abuse as the reason BCI 1 was seeking medication. *Id.* at 413. While Dr. Christensen acknowledged that BCI 1 had been seen by Dr. Vora, he testified that if the medical record is incomplete, a subsequent physician must obtain the missing history which is relevant to the patient's complaint, especially if the treatment plan involves controlled substances. *Id.* at 411–12. *See also id.* at 489 (''the first thing you should do is take a history'' that is relevant to the complaint). Dr. Christensen also testified as to the various items, which under the standard of care in Michigan, should be addressed in taking a pain patient's history, including addressing the onset of the pain, the duration of the pain, factors that aggravate or relieve the pain, what brings the pain on, the severity of the pain, and how the pain affects the patient's function. *Id.* at 374.

Notably, the visit notes created by Dr. Vora contained no discussion of these issues other than to note that the onset date of BCI 1's back pain was 12/15/2014. *See* GX 10, at 1 (Jan. 12, 2015 note); *id.* at 3 (Dec. 15, 2014 note); *see also id.* at 5 (Nov. 10, 2014 note which lists back pain and back stiffness as patient's complaint but no other information). Moreover, while Respondent proceeded to ask BCI 1 as to how long he had back pain, whether he got muscle spasms with the pain, whether he walked with a limp, whether he had any loss of muscle strength, and whether the pain shot anywhere or was just localized, even when BCI 1's answers were ambiguous, Respondent accepted them with no further questioning. He did not ask questions that would clarify whether BCI 1's purported pain was caused by an injury, question BCI 1 about any prior treatments he received, nor clarify what BCI 1 meant when he said he was mostly just stiff. And while Respondent asked BCI 1 if he smoked, used marijuana, and was a social drinker, even after BCI 1 replied that he took Xanax to keep from drinking too much on the weekends, Respondent asked no further questions to determine the extent of Respondent's alcohol use.

As for Respondent's physical exam, it is acknowledged that Dr. Vora's visit note for BCI 1's December 15, 2014 visit documented the performance of a physical exam and that Dr. Christensen acknowledged that this would be an appropriate exam on a follow-up visit.[34]

[34] As found above, Dr. Vora made no physical exam findings pertinent to BCI 1's complaint of back pain at his first visit (Nov. 2014), and Dr.

However, even assuming that the findings documented in the December 2014 visit note establish that Dr. Vora performed an appropriate physical exam, as well as acknowledging that a physical exam is not necessarily required at a follow-up visit and that a subsequent physician can rely on the medical record absent some indication that the record is not truthful, Respondent nonetheless documented various findings of a physical exam when the evidence shows he did not perform the tests necessary to make those findings. These include not only his finding of moderate point tenderness as well as his findings that BCI 1's cranial nerves IV–XII were intact. *Compare* GX 10, at 31, *with* Tr. 416 (testimony of Dr. Christensen noting no evidence of palpation of BCI 1's lower back) and *id.* at 417–19 (testimony of Dr. Christensen noting no evidence of testing of BCI 1's cranial nerves).

Moreover, even as to the tests Respondent did perform, Dr. Christensen's testimony suggests that Respondent was just going through the motions, as the arm abduction/adduction test he did do is not used to assess lower back pain but rather nerve issues in the thoracic and cervical spine. *Id.* at 386. Indeed, while Respondent asserted that his purpose in doing this test was to establish if BCI 1 had ''referred pain,'' *id.* at 661, he did not ask BCI 1 if it caused pain, and BCI 1 did not complain that it caused pain at either visit. GX 3, at 9; GX 5, at 4.

Thus, Respondent did not simply rely on Dr. Vora's physical exam findings but deemed it necessary to document his own false findings to support his decision to prescribe Norco to BCI 1. Respondent also gave false testimony when he asserted that he had actually palpated BCI 1. Moreover, the statements made at various points in his interaction with BCI 1 show that Respondent knew that BCI 1 was not a legitimate pain patient. These include:

BCI 1's statement that he took Xanax because it kept him from drinking too much moonshine on the weekends;

BCI 1's statement that the drugs he was getting from Respondent were ''worth a lot of money on the street'' and Respondent's explanation that this is because the drugs are ''pure'' and ''there is nothing cut down about them. So when you're selling them'' followed by BCI 1's statement that ''it's a little safer to do it that way'' and Respondent's acknowledgement that this was ''right'';[35]

BCI 1's statements that ''a couple of times'' he had ''r[u]n out of pills'' and had to ''trade with [his] neighbor,'' as well as his statement that he asked Dr. Vora ''for a couple extra'' pills which he gave back to his neighbor;[36] and after Respondent asked BCI 1 ''but 66'' [the quantity of Dr. Vora's previous Norco prescription] what's that about?''; BCI 1's statement that ''I can't be paying—buying them on the street.''

As further evidence that Respondent knew that BCI 1 was likely engaged in either abuse or diversion of controlled substances, BCI 1's MAPS report[37] showed that he had obtained alprazolam from four different prescribers, including prescribers whose offices were in Detroit and Marquette, 400 miles apart. GX 10, at 23. Notably, while Respondent testified that on his first day at the clinic, he did not have access to urine drug screen reports, he also testified that he would request and the staff ''would give'' him ''printouts of the charts''; he also testified that ''I had at the very least to have the MAPS.'' Tr. 638. At no point did Respondent deny that he had received BCI 1's MAPS report at the time of the first visit, nor did he offer testimony that he did not review BCI 1's MAPS report. As Dr. Christensen explained, the ''high geographic distance between [the] providers'' and the ''multiple providers'' listed on BCI 1's MAPS report are ''signs of doctor shopping'' and ''diversion or misuse.'' *Id.* at 414.

Dr. Christensen opined that based on his review of the video, the transcript, and BCI 1's medical file, Respondent's issuance of the Norco prescription was inappropriate because ''[t]here was no documentation of moderate to moderately severe pain.'' *Id.* at 419–20. Dr. Christensen also explained that the evidence created ''concern about another underlying diagnosis,'' *i.e.,* substance abuse, ''that would have mandated either a referral or not writing the [Norco] prescription.'' *Id.*

Dr. Christensen thus opined, and the CALJ agreed, that none of the three prescriptions Respondent wrote for BCI 1 on February 19, 2015 were issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Tr. 425–26. I agree.

As for BCI 1's second visit, as Dr. Christensen noted, when Respondent asked about his pain level, the former replied that ''everything is cool.'' Tr. 428. Dr. Christensen also noted that when Respondent then asked BCI 1 to rate his pain on a 1–10 scale, BCI 1 simply replied: ''I'm good today.'' *Id.* Dr. Christensen testified that these were ''non-responsive'' and ''evasive answer[s], which can be signs of drug-seeking behavior.'' *Id.* at 430–31.[38]

Dr. Christensen further explained that a reasonable practitioner would have asked BCI 1 about his function level,

Christensen was not asked if the findings made by Dr. Vora in the December 2014 visit establish that an appropriate physical exam was performed as part of the initial evaluation of BCI 1's complaint. For purposes of this discussion, I assume, without deciding, that the December 2014 physical exam findings establish that Dr. Vora performed an appropriate exam, whether the visit is viewed as an initial evaluation or a follow-up.

I also assume, without deciding, that at the time he commenced his February 2015 *locum tenens* service at Dr. Vora's clinic and prior to his interaction with BCI 1, Respondent did not have sufficient information to conclude that Dr. Vora was not engaging in the legitimate practice of medicine. *See* Tr. 532 (testimony of Dr. Christensen that it was reasonable to trust Dr. Vora's documentation absent an indication that the records were not truthful).

[35] As for his statement that the prescriptions he was giving BCI 1 ''would be like 6 or 7 hundred dollars,'' Respondent initially testified that ''it was an inappropriate conversation'' but that he was ''trying to relate to the patient,'' only for him to claim that he ''wasn't telling him to sell the drugs'' and that he was trying to convey that it was ''the pharmaceutical companies'' that were ''getting rich off the patients like himself.'' However, even were I to credit Respondent's latter explanation that he discussed the high prices of drugs as being caused by the drug companies making lots of money, his subsequent explanation to BCI 1 that the reason the drugs were worth a lot of money is because ''[t]hey're pure'' and ''there is nothing cut down about them,'' leaves no doubt that Respondent understood that BCI 1 was not a legitimate patient.

[36] Of further note, while BCI 1 entered into a Controlled Substances Management Agreement, which prohibited him from sharing, selling or trading his medication, and Dr. Christensen testified that ''at a minimum,'' a reasonable practitioner would tell the patient that this is illegal and that if this was to happen again, the physician ''would not be able to prescribe'' any more controlled substances. Tr. 403, 406.

[37] The report was dated October 29, 2014. GX 10, at 23.

[38] I have considered Respondent's testimony that he interpreted BCI 1's answer to his question, ''[s]o how is everything going with your pain'' (''great, yup, everything is cool''), as meaning ''that the regimen or the plan of his management was working.'' Tr. 674. I have also considered Respondent's testimony that he interpreted BCI 1's answer—when asked to rate his pain on a scale of one to ten—of ''I am good today,'' as ''pain waxes and wanes'' and ''[t]his might be just a time when he comes into the office [and] he might have just taken his medication.'' *Id.* at 676.

Even were I to consider this testimony without regard to the CALJ's findings that Respondent's testimony was generally not credible, which I decline to do, Respondent did not ask any further questions to probe why BCI 1 answered his questions as he did, nor ask BCI 1 when he last took his medication. Also, as Dr. Christensen testified, Respondent did not engage in anything close to a meaningful assessment of how the pain affected BCI 1's level of function, whether there were side effects, or ask about aberrant behavior. I thus find Respondent's testimony on these issues not credible.

Respondent also explained that the reasons he made various comments to BCI 1 was because he felt the latter's comments to him were racially motivated and created a situation where he had to work to gain BCI1's trust. Tr. 658. He also testified that he encountered racial animus from several other patients. *Id.* The CALJ rejected Respondent's contention, noting that ''[t]here was no evidence of any tension in any of the three office visits in the video recordings or the transcripts'' and that this does not excuse his violations of federal law. R.D. at 84–85. I agree.

side effects of the medication, and inquired about any aberrant behaviors. *Id.* at 429. Yet none of this was done. Moreover, the entire interaction between BCI 1 and Respondent lasted less than two minutes, and while a physical exam is not necessarily required on a follow-up visit, Respondent nonetheless performed an exam. Significantly, his examination was limited to having BCI 1 walk back and forth and performing the arm abduction/adduction test, which as previously explained, tests for nerve damage in the thoracic and cervical spine and not nerve damage in the lower back. As Dr. Christensen explained, the examination was not adequate to support medical decision making and that this ''was a negative evaluation for moderate to moderately severe pain.'' *Id.* at 431, 429.

Also, as Dr. Christensen explained, Respondent again falsified the visit note by documenting physical exam findings when he did not perform the tests necessary to make those findings. *Id.* at 433–35. Dr. Christensen specifically identified the findings of ''moderate point tenderness to low back,'' ''cranial nerves 2 through 12 intact,'' ''2+ pulses throughout,'' and ''2/2 reflexes'' as not supported by tests, and he further explained that there were no findings to support the diagnoses of degenerative disc disease in the lumbar area, anxiety, and muscle spasm. *Id.* at 447.

While Respondent testified that he palpated BCI 1's back, here again, BCI 1 credibly testified that he did not do so. Moreover, as for Respondent's testimony that ''you can indirectly evaluate the cranial nerves'' by looking for facial palsy and if ''speech patterns [are] similar to somebody who is deaf,'' *id.* at 678–79, Dr. Christensen testified that an examination of a patient's cranial nerves is far more extensive than what Respondent claim is required. *See id.* at 417–19. As for Respondent's claim that he assessed BCI 1's radial pulse when he performed the arm abduction/adduction test by pinching his wrist, Dr. Christensen testified that a finding of ''2+ pulses throughout'' also requires testing of the pulse in the lower extremities. *Id.* at 434–35. There is, however, no evidence that Respondent touched BCI 1's lower extremities. While Respondent also documented findings of ''2/2 reflexes'' and ''Full RoM,'' Respondent offered no testimony as to how he accomplished the tests necessary to make these findings and the video provides no evidence that he did so. Thus, the evidence shows that Respondent again falsified BCI 1's medical record when he documented findings that would support prescribing Norco and carisoprodol. Moreover, there are no findings in the March 19 (or the February 19) visit note that support a diagnosis of anxiety and the prescribing of alprazolam.

Accordingly, based on the medical record, the video and transcript of the visit, Dr. Christensen's testimony, and the inferences to be drawn from Respondent's false testimony, I conclude that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he issued each of the three March 19, 2015 prescriptions to BCI 1. 21 CFR 1306.04(a).

BCI 2's Prescriptions

The CALJ also concluded that Respondent violated 21 CFR 1306.04(a) when he issued the Norco and Carisoprodol prescriptions to BCI 2. R.D. 84. I agree.

As found above, in responding to Respondent's instruction to tell him how she was doing and how she was feeling, BCI 2 stated that she was ''[j]ust here for refills,'' that she was ''feel[ing] great today,'' and ''actually,'' she had ''been doing really good'' and ''ha[d] no complaints.'' GX 7, at 2. Dr. Christensen testified that the statement that she had ''no complaints'' did ''not mean anything'' and that Respondent did not determine whether BCI 2 had ''been taking the medication and if the medication is the reason . . . for how she feels.'' Tr. 450. According to Dr. Christensen's unrefuted testimony, under the standard of care, Respondent was required to follow-up this exchange by asking BCI 2 if she had ''been taking the medications,'' as well as by asking about her ''pain level, activity level, side effects,'' and inquire as to whether she was engaged in any aberrant behavior. *Id.*

Dr. Christensen noted that BCI 2 denied that she had muscle spasms and when asked ''when does it hurt the most,'' her answer was that ''sometimes'' when she was asleep and her alarm went off, she would twist to turn off her alarm and screw her back up, but that this had not ''happened in a very long time'' and she had ''been doing really well.'' Tr. 454. Dr. Christensen testified that this discussion did not support a finding ''of a moderate or higher pain level'' and that a reasonable practitioner would ask a patient who said she was not having pain if she was taking her medication and evaluate based on her answer. *Id.* at 454–55.

Dr. Christensen noted that while BCI 2's records listed a complaint of lower back pain, she did not check any of the symptoms of muscle, joint or bone pain listed on the Medical History Form. *Id.* at 456; *see also* GX 11, at 10. He also observed that, on this form, she had listed Norco, Ambien, and Xanax as her current medications. He then explained that Norco and Xanax is a potentially dangerous combination and that Ambien causes side effects and creates risks similar to benzodiazepines, that this combination of drugs raises the concern as to why it ''is being prescribed or taken,'' and if ''there was a legitimate diagnosis for'' the prescriptions. Tr. 457–58.

With respect to the pain clinic history questionnaire, Dr. Christensen noted that BCI 2 had listed her pain level as ranging from ''0 to 4,'' but did not circle such items as its location, what made her pain worse, how the pain made her feel, and whether pain levels she listed were with or without medication. *Id.* at 461–62; *see* GX 11, at 23. He further observed that while BCI 2 indicated on the form that she used alcohol, she did not provide any information as to the extent of her drinking. *Id.* at 462; GX 11, at 24. He then explained that, under the standard of care, Respondent was required to obtain this information because the amount of her drinking could increase the side effects and risks from the combination of drugs she was prescribed. *Id.* Notably, Respondent did not ask BCI 2 any question about her use of alcohol.

Dr. Christensen further observed that Respondent documented various findings in the progress note even though the video evidence shows that he had no basis to do so. Specifically, Respondent made a finding of ''point tenderness to right lower back,'' notwithstanding that he never palpated BCI 2. Tr. 464–65; GX 11, at 35. Dr. Christensen further noted that BCI 2 ''said she was good and she was great and there was no problem.'' Tr. 464.

As for Respondent's finding that the pain ''shoots to left hip,'' Dr. Christensen testified that BCI 2 did not complain that her pain radiated or shot to her left hip, and, in fact, when BCI 2 was asked ''to point to where it is,'' she pointed to her right hip area. *Id.* at 465, 285, 572. Indeed, BCI 2 said that ''it just stays there.'' GX 7, at 3. As for Respondent's finding of ''Full Rom,'' while Dr. Christensen acknowledged that he performed the abduction/adduction test on BCI 2's arms, he did not perform any other range of motion testing. Tr. 465. Dr. Christensen also noted that Respondent did not perform the tests necessary to make his findings of ''CN II–XII intact,'' ''2+ pulses

throughout,'' [39] and ''2/2 reflexes.'' *Id.* at 465–66. He further observed that while Respondent diagnosed BCI 2 as having muscle spasms, he did not palpate her and she specifically denied having spasms; he also noted that there was no documentation for his diagnosis of ''abnormal gait periodically,'' and BCI 2 denied that the pain caused her to limp. *Id.* at 467; GX 7, at 3–4.

As found above, on January 23, 2015, Dr. R. had issued BCI 2 prescriptions for 30-day quantities of both Xanax and Ambien, with each prescription providing for four refills. Thus, when Respondent prescribed Norco and carisoprodol to BCI 2, she had current prescriptions for four different controlled substances. As Dr. Christensen explained, this combination of sedatives is ''a highly addictive and dangerous combination.'' Tr. 474.

Respondent justified his prescribing, maintaining that he reviewed the medical records created by Dr. Vora and Dr. R., including the latter's ''physical and . . . what she gave the patient.'' *Id.* at 681. However, in the January 23, 2015 visit note, Dr. R. indicated that she was issuing both Ambien and Xanax prescriptions, each of which provided for four refills. Moreover, the prescriptions were in the file, each clearly indicated that four refills were authorized, and, in contrast to his testimony that the medical files did not contain the UDS results, Respondent made no claim that the prescriptions were not in the files.

Moreover, while Dr. Christensen testified that that Dr. R.'s documentation of her January 23, 2015 examination reflected an appropriate examination based on BCI 2's complaint of lower back pain (as documented on her chart), notably, at BCI 2's Feb. 19 visit (which immediately preceded her visit with Respondent), Dr. R. had reduced the Norco prescription from 60 dosage units to five dosage units (a five-day supply), doing what Dr. Christensen explained was ''a planned taper.'' Tr. 577; see also GX 11, at 30. Yet Respondent increased BCI 2's Norco prescription back up to 60 dosage units even though BCI 2 never once claimed that she was currently in pain and, indeed, made statements that she was ''feel[ing] great,'' that she had ''been doing really good'' and ''ha[d] no complaints,'' that ''like right now I have like nothing. I feel good. I have good days and bad,'' and even when she identified when it hurt her the most, she added: ''But I haven't had that happen in a very long time like literally I have been really doing well.''

Although Dr. Christensen acknowledged that these statements could be an indication that BCI 2's condition was well managed with her medication, he explained that it was not reasonable for Respondent to conclude that her medication regimen was appropriate given that Respondent did not ask her if she was taking her medication and how much medication she was taking. Tr. 563–64. Moreover, while Respondent testified that he had reviewed what Dr. R. had prescribed to BCI 2, he did not issue the same prescriptions but rather increased her Norco prescription back up to 60 dosage units.

As Dr. Christensen explained, while there was some discussion between Respondent and BCI 2 as to why he had decreased the carisoprodol prescription, there was no discussion between the two as to why he increased the Norco prescription. *Id.* at 576. Notably, Dr. Christensen explained that the standard of care in Michigan includes ''the principle of informed consent,'' which requires a physician to explain why the physician is ''making a major change'' in a patient's controlled medications and the risks involved. *Id.* at 577. He testified that while Respondent's decision to decrease BCI 2's carisoprodol prescription was reasonable, it was ''not a rational therapeutic choice'' to increase her Norco ''to maintain the analgesic effect'' of her carisoprodol. *Id.* at 580. Indeed, he testified that BCI 2 should have been on ''neither'' drug. *Id.* at 580–81.

As for why he increased BCI 2's Norco prescription, Respondent testified that he was aware that Dr. R. had previously reduced it to five dosage units, but that he ''wanted to make sure her pain was under control.'' *Id.* at 685. However, as found above, BCI 2 generally denied having pain and certainly denied having had recent pain. Moreover, Respondent did not ask her if she was even taking the medications that Dr. R. had prescribed, let alone assess how her pain affected her ability to function, whether she had side effects from the medications, and whether she was engaged in any aberrant behavior.[40]

Dr. Christensen opined that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in issuing the Norco and carisoprodol prescriptions to BCI 2. I agree. Based on Dr. Christensen's testimony that Respondent's evaluation was totally inadequate, his testimony that increasing the Norco prescription was not a rational therapeutic choice, that the combinations of drugs prescribed to BCI 2 was highly addictive and dangerous, and Respondent's falsification of the visit note to reflect various findings to support the prescribing of controlled substances when he failed to perform the necessary tests and BCI 2 made no complaint of pain, I conclude that the record as a whole supports the conclusion that Respondent did not simply engage in malpractice, but knowingly issued the prescriptions in violation of 21 CFR 1306.04(a).

Issuance of Prescriptions That Did Not Include the Patient's Address

In addition to the violations of the CSA's prescription requirement, the record supports a finding that Respondent violated 21 CFR 1306.05(a) when he failed to include the patient's address on each of the eight prescriptions at issue in this matter. Under this regulation, ''[a]ll prescriptions for controlled substances . . . shall bear the full name and address of the patient.'' *Id.* § 1306.05(a). This regulation further provides that ''the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations.'' *Id.* § 1306.05(f). As found above, Respondent failed to include the patient's address on each of the eight prescriptions he issued to BCI 1 and BCI 2 and thus violated section 1306.05(a) as well.

Summary of Factors Two and Four

As for Respondent's evidence of his experience as a dispenser of controlled substances, it includes the testimony of Dr. Scott that, pursuant to the order of the Michigan Board, she had supervised Respondent beginning around April 2014 for a period of one year, that she reviewed about 10 of his pain clinic patient charts, and that she ''did not have any problems with'' them. Tr. 605, 610. Dr. Scott's testimony does not, however, refute the proof of the specific violations found above. Moreover, Dr. Scott's testimony suggests that the prescribing violations which have been proven on the record of this case occurred during the period in which

[39] For the same reasons that I rejected Respondent's testimony that he made this finding with respect to BCI 1 based on the arm abduction/adduction tests he performed, I reject it with respect to BCI 2 as well.

[40] As found above, Respondent claimed that he was denied access to the urine drug screens at both visits, and thus, this means of determining if the patients were engaged in aberrant behavior was unavailable. Asked why he nonetheless prescribed 30-day quantities of narcotics such as hydrocodone, Respondent testified that ''you can never just have the patient go cold turkey for any type of narcotic'' and ''if the patient runs out, they [sic] go into withdrawals [sic].'' Tr. 693–94. Yet BCI 2 had been already tapered off of Norco by Dr. R.

Respondent was under a Board-imposed probation. As for Respondent's prescribing at the detention facility, Dr. Scott offered no testimony that he has treated any of the facility's patients with narcotics and Respondent himself acknowledged that ''not that much'' of his work at the facility involves prescribing narcotics. Although Respondent also maintained that a small portion of his work at the facility involves prescribing ''anti-psychotics'' when psychiatrists are not at the facility, he offered no evidence that any of this prescribing involves controlled substances. Finally, while Respondent also testified that prescribing narcotics was part of his training in his fellowships, the manner in which he prescribed to the investigators suggests that he did not learn very much about the proper prescribing of controlled substances.[41]

In any event, even assuming that Respondent has complied with federal law with respect to every other controlled substance prescription he has issued in the course of his professional career, Respondent's experience evidence does not refute my findings that he lacked a legitimate medical purpose and acted outside of the usual course of professional practice in issuing each of the eight different prescriptions and that he knowingly diverted controlled substances. *See* 21 CFR 1306.04(a). I therefore conclude that the evidence with respect to Factors Two and Four establishes that Respondent ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

Sanction

Where, as here, the Government has established grounds to revoke a registration or deny an application, a respondent must then ''present[ ] sufficient mitigating evidence'' to show why he can be entrusted with a new registration. *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where [an applicant] has committed acts inconsistent with the public interest, the [applicant] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995).

An applicant's acceptance of responsibility must be unequivocal. *See Lon F. Alexander,* 82 FR 49704, 49728 (2017) (collecting cases). Also, an applicant's candor during both an investigation and the hearing itself is an important factor to be considered in determining both whether he has accepted responsibility as well as the appropriate sanction. *Michael S. Moore,* 76 FR 45867, 45868 (2011); *Robert F. Hunt, D.O.,* 75 FR 49995, 50004 (2010); *see also Jeri Hassman,* 75 FR 8194, 8236 (2010) (quoting *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (''Candor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a physician's registration is consistent with the public interest[.]'')), *pet. for rev. denied,* 515 Fed. Appx. 667 (9th Cir. 2013).

While a registrant must accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct in order to establish that his registration would be consistent with the public interest, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate disposition of the matter. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009).

So too, the Agency can consider the need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

The CALJ found that Respondent has refused to accept responsibility for his misconduct. R.D. at 91. As the CALJ explained, ''[f]ar from offering an unequivocal acceptance of responsibility . . . Respondent offered excuses for his conduct that smacked more of contrivance than contrition.'' *Id.* Indeed, Respondent specifically denied that he violated 21 CFR 1306.04(a) with respect to any of the prescriptions. I therefore agree with the CALJ that Respondent has failed to accept responsibility for his misconduct.

Given the egregious nature of his misconduct, which involves the knowing diversion of controlled substances, Respondent's failure to acknowledge his misconduct provides reason alone to conclude that he has not rebutted the Government's *prima facie* case.[42] Indeed, this Agency has explained that because the knowing diversion of controlled substances strikes at the core of the CSA's purpose, the Agency will not grant an application (or continue a registration) where the evidence shows that a practitioner has engaged in even a single act of the knowing diversion of a controlled substance and the practitioner refuses to acknowledge his/her misconduct. *See Samuel Mintlow,* 80 FR 3630, 3653 (2015) (citing *Dewey C. MacKay,* 75 FR 49956, 49977 (2010) (citing *Krishna-Iyer,* 74 FR 459, 463 (2009) and *Alan H. Olefsky,* 57 FR 928, 928–29 (1992))). Moreover, while the Agency's interest in specific deterrence is not triggered (because I deny his application), the Agency's interest in deterring other practitioners who contemplate diverting controlled substances is manifest.

I therefore conclude that granting Respondent's application for a registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). Accordingly, I will order that his pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b),

[41] As for the testimony of Ms. Clemmons, she worked for Respondent for a brief period of time, and she offered only generalized testimony about procedures at his clinic which does not address the specific violations alleged in this matter.

[42] Even had Respondent accepted responsibility, his evidence which is arguably relevant on the issue of remediation is not adequate to assure me that he can be entrusted with a registration. As found above, his evidence simply amounts to his promise to do better in the future and his non-binding desire that ''I do not really want to do pain management . . . But right now the only thing that's open is pain management.'' Tr. 688–89. Thus, his promise is no more than a ''goal.'' *Id.* at 689.

I order that the application of Garrett Howard Smith, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: April 17, 2018.

Robert W. Patterson,

Acting Administrator.

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