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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0210; Product Identifier 2019–CE–004–AD; Amendment 39–19608; AD 2019–06–10]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Vulcanair S.p.A. Model AP68TP–300 ''SPARTACUS'' and Model AP68TP–600 ''VIATOR'' airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on wing ribs, which could result in reduced structural integrity of the wing assembly. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 29, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 29, 2019.

We must receive comments on this AD by May 24, 2019.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Vulcanair S.p.A., Via Giovanni Pascoli 80026 Casoria NA Italy; telephone: +39 081 5918111; fax: +39 081 5918172; internet: *http://www.vulcanair.com*; email: *office.oaw@vulcanair.com*; or *airworthiness@vulcanair.com*. You may view this referenced service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–0210.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0210; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2018–0269, dated December 11, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An occurrence was reported of finding cracks in the affected area [wing ribs #3 and #4] on an AP68TP–600 ''Viator'' aeroplane during a scheduled inspection task. Prompted by post-analysis of the occurrence, Vulcanair determined that some aeroplanes were reinforced in the affected area, through a repair developed by Partenavia. Vulcanair also determined that this repair would have prevented the crack initiation. It was finally determined that AP68TP–300 ''Spartacus'' aeroplanes are also affected by this condition.

This condition, if not detected and corrected, could affect the structural integrity of the wing assembly of the aeroplane.

To address this potential unsafe condition, Vulcanair issued the [service bulletin] SB, embodying the repair designed by Partenavia, providing instructions for one-time inspection of [left-hand/right-hand] LH/RH wing ribs #3 and #4, and for modification (reinforcement or embodiment of appropriate repair), as necessary.

For the reasons described above, this [EASA] AD requires a one-time inspection of the affected area, and, depending on findings, accomplishment of the applicable modification (repair or reinforcement of the affected area) of the aeroplane.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0210.

Related Service Information Under 1 CFR Part 51

We reviewed Vulcanair Aircraft Service Bulletin No. TP–43, First Issue, dated October 15, 2018. The service information contains procedures for inspecting the left hand (LH) and right hand (RH) wing ribs number 3 and number 4 and includes a table indicating the necessary actions for installation of reinforcements and repair of cracks. We also reviewed Vulcanair Aircraft Service Instruction No. 106, First Issue, dated October 15, 2018, which contains instructions for installing reinforcement Kit SI106 on the LH and RH wing rib number 3; and Vulcanair Aircraft Service Instruction No. 107, First Issue, dated October 15, 2018, which contains instructions for installing reinforcement Kit SI107 on the LH and RH wing rib number 4. 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority 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

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the wing ribs could result in reduced strength and stiffness of the wing and lead to failure of the wing with consequent inflight breakup of the airplane. Cracks in the ribs could also initiate cracking in other adjacent structures, which would accelerate the reduction in structural strength. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons 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–2019–0210; Product Identifier 2019–CE–004–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 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 AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the inspection requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $170, or $85 per product.

In addition, we estimate that any necessary installation of the reinforcement modification would take about 8 work-hours for rib number 3 on each wing; 8 work-hours for rib number 4 on each wing; and 12 work-hours for both ribs numbers 3 and 4 on each wing.

The following are a parts cost estimates per side:

1. Kit SI106 (if the required corrective action is the installation of the reinforcement to LH or RH wing rib #3) $240.

2. Kit SI107/A (if the required corrective action is the installation of upper and rear reinforcements to LH or RH wing rib number 4 due to no reinforcements existing) $469.

3. Kit SI107/B (if the required corrective action is the installation of rear reinforcements to LH or RH wing rib number 4 due to only the upper reinforcement existing) $240.

4. Kit SI107/C (if the required corrective action is the installation of upper reinforcement to LH or RH wing rib number 4 due to only the rear reinforcement existing) $240.

Since installation of the reinforcement modification kits can only be done on airplanes where cracks or corrosion was not found during the required inspection, we have no way of knowing how many airplanes may require the installation of the reinforcement modification kits.

Also, damage from cracks or corrosion found during the inspection may vary from airplane to airplane and the cost to repair the damage will vary from airplane to airplane. Therefore, we have no way of knowing how many airplanes may require repair or the cost of that repair.

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–06–10 Vulcanair S.p.A.: Amendment 39–19608; Docket No. FAA–2019–0210; Product Identifier 2019–CE–004–AD.

(a) Effective Date

This AD becomes effective April 29, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Vulcanair S.p.A. Model AP68TP–300 ''SPARTACUS'' airplanes, serial numbers (S/N) 8001 through 8006, 8008, 8009, and 8011; and Model AP68TP–600 ''VIATOR'' airplanes, S/N 9001 through 9005, and 9010; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on the wing ribs. We are issuing this AD to detect, correct, and prevent cracks on the wing ribs, which could result in reduced structural integrity of the wing assembly and failure of the wing.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) within 3 months after April 29, 2019 (the effective date of this AD) or within 50 hours time-in-service after April 29, 2019 (the effective date of this AD), whichever occurs first.

(1) Inspect the left hand (LH) and right hand (RH) sides of wing rib number 3 and wing rib number 4 for missing reinforcements, cracks, and corrosion by following the Work Procedure, paragraphs 1 through 6, of Vulcanair Aircraft Service Bulletin No. TP–43, First Issue, dated October 15, 2018.

(2) If there is no corrosion and no cracks and if a reinforcement is missing, before further flight, install the reinforcement in accordance with the Work Procedure, paragraphs 1 through 19, of Vulcanair Aircraft Service Instruction No. 106, First Issue, dated October 15, 2018, for wing rib number 3 or the Work Procedure, sections 2.2 and 2.3, of Vulcanair Aircraft Service Instruction No. 107, First Issue, dated October 15, 2018, for wing rib number 4, as applicable to the missing reinforcement.

(3) If there is any corrosion or a crack, before further flight, repair the wing spar in accordance with a method approved by the Manager, Small Airplane Standards Branch, FAA, at the address specified in paragraph (g) of this AD. For a repair method to be approved by the Manager, Small Airplane Standards Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email:. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(h) Related Information

Refer to MCAI EASA AD No. 2018–0269, dated December 11, 2018. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0210.

(i) 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) Vulcanair Aircraft Service Bulletin No. TP–43, First Issue, dated October 15, 2018.

(ii) Vulcanair Aircraft Service Instruction No. 106, First Issue, dated October 15, 2018.

(iii) Vulcanair Aircraft Service Instruction No. 107, First Issue, dated October 15, 2018.

(3) For Vulcanair service information identified in this AD, contact Vulcanair S.p.A., Via Giovanni Pascoli 80026 Casoria NA Italy; telephone: +39 081 5918111; fax: +39 081 5918172; internet: *http://www.vulcanair.com;* email: *office.oaw@vulcanair.com;* or *airworthiness@vulcanair.com.*

(4) You may view this service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–02110.

(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 Kansas City, Missouri, on March 25, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–06909 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0895; Product Identifier 2018–CE–037–AD; Amendment 39–19609; AD 2019–06–11]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 14, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 14, 2019.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0895; or in person at 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 service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may view this referenced service information at

the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2018–0895.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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 Pacific Aerospace Limited Model 750XL airplanes. The NPRM was published in the **Federal Register** on October 23, 2018 (83 FR 53407). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> The insulation lagging provided by the air-conditioning supplier has been found to be non-compliant and may cause large amounts of smoke in the cabin in the event of a fire. DCA/750XL/29 issued to mandate the instructions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/086 issue 2, dated 6 April 2018, or later approved revision to correct non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system.

The MCAI can be found in the AD docket on the internet at: *https://www.regulations.gov/document?D=FAA-2018-0895-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Related Service Information Under 1 CFR Part 51

We reviewed Pacific Aerospace Service Bulletin PACSB/XL/086, Issue 2, dated April 6, 2018. The service information describes procedures for replacing the noncompliant insulation lagging with compliant materials. 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 will affect 22 products of U.S. registry. We also estimate that it would take about 32 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $70,840, or $3,220 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation 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 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.

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–2018–0895; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–06–11 Pacific Aerospace Limited: Amendment 39–19609; Docket No. FAA–2018–0895; Product Identifier 2018–CE–037–AD.

(a) Effective Date

This AD becomes effective May 14, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers (S/N) up to and including S/N 205, S/N 207, and S/N 208, certificated in any category, with an air-conditioning modification PAC/XL/0409 or PAC/XL/0618 installed.

(d) Subject

Air Transport Association of America (ATA) Code 21: Air Conditioning.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system. We are issuing this AD to replace non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system, which could lead to smoke in the cabin if a fire occurred.

(f) Actions and Compliance

Unless already done, within 150 hours time-in-service after May 14, 2019 (the effective date of this AD), remove existing refrigeration hose lagging, install fire sleeve lagging, and install aluminum tape at the wing spar by following the Accomplishment Instructions in Pacific Aerospace Service Bulletin PACSB/XL/086, Issue 2, dated April 6, 2018.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the Civil Aviation Authority of New Zealand (CAA).

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/750XL/29, dated July 5, 2018, for related information. You may examine the MCAI on the internet at: *https://www.regulations.gov/document?D=FAA-2018-0895-0002.* For service information related to this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(i) 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) Pacific Aerospace Service Bulletin PACSB/XL/086, Issue 2, dated April 6, 2018.

(ii) [Reserved]

(3) For Pacific Aerospace Limited service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0895.

(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 Kansas City, Missouri, on March 25, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–06911 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31244; Amdt. No. 3845]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 9, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal

Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 22, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 25 April 2019

Forest City, IA, Forest City Muni, NDB RWY 33, Amdt 2B, CANCELLED
Forest City, IA, Forest City Muni, RNAV (GPS) RWY 33, Orig-B
Forest City, IA, Forest City Muni, VOR–A, Amdt 3B
St. Jacob, IL, St Louis Metro-East/Shafer Field, RNAV (GPS)–A, Orig, CANCELLED
St. Jacob, IL, St Louis Metro-East/Shafer Field, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
St. Jacob, IL, St Louis Metro-East/Shafer Field, VOR–A, Amdt 4, CANCELLED
Coushatta, LA, The Red River, RNAV (GPS) RWY 18, Orig
Coushatta, LA, The Red River, Takeoff Minimums and Obstacle DP, Orig
Sault Ste Marie, MI, Chippewa County Intl, ILS OR LOC RWY 16, Amdt 8E
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 18, Orig–C
Auburn, NE, Farington Field, RNAV (GPS) RWY 16, Orig
Auburn, NE, Farington Field, RNAV (GPS) RWY 34, Orig
Auburn, NE, Farington Field, Takeoff Minimums and Obstacle DP, Orig
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, ILS OR LOC RWY 30, Amdt 7B
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, VOR RWY 35, Amdt 18C
Mansfield, OH, Mansfield Lahm Rgnl, ILS OR LOC RWY 32, Amdt 17B
Greeneville, TN, Greeneville-Greene County Muni, RNAV (GPS) RWY 5, Amdt 1
Greeneville, TN, Greeneville-Greene County Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Houston, TX, George Bush Intercontinental/ Houston, ILS OR LOC RWY 15R, Amdt 2B
Yoakum, TX, Yoakum Muni, NDB RWY 31, Amdt 3, CANCELLED
Fairmont, WV, Fairmont Muni-Frankman Field, Takeoff Minimums and Obstacle DP, Amdt 6A

Rescinded: On March 14, 2019 (84 FR 9225), the FAA published an Amendment in Docket No. 31240, Amdt No. 3841, to Part 97 of the Federal Aviation Regulations under sections 97.29 and 97.33. The following entries for Boston, MA, effective April 25, 2019, are hereby rescinded in their entirety:

Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 4R, ILS RWY 4R SA CAT I, ILS RWY 4R CAT II, ILS RWY 4R CAT III, Amdt 11
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 15R, Amdt 2

Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 27, Amdt 3
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 4R, Amdt 3
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 27, Amdt 1

[FR Doc. 2019–06754 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31245; Amdt. No. 3846]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 9, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 22, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Apr–19	FL	Tampa	Tampa Executive	8/2054	3/1/19	This NOTAM, published in TL 19–09, is hereby rescinded in its entirety.
25–Apr–19	FL	Tampa	Tampa Executive	8/2102	3/1/19	This NOTAM, published in TL 19–09, is hereby rescinded in its entirety.
25–Apr–19	UT	Duchesne	Duchesne Muni	9/4478	3/11/19	VOR/DME–A, Orig.
25–Apr–19	UT	Duchesne	Duchesne Muni	9/4479	3/11/19	Takeoff Minimums and Obstacle DP, Orig–A.
25–Apr–19	OR	Mc Minnville	Mc Minnville Muni	9/4615	3/11/19	RNAV (GPS) RWY 4, Orig–C.
25–Apr–19	FL	Tampa	Tampa Executive	9/6087	3/13/19	RNAV (GPS) RWY 5, Orig–C.
25–Apr–19	FL	Tampa	Tampa Executive	9/6088	3/13/19	ILS OR LOC RWY 23, Amdt 1C.

[FR Doc. 2019–06756 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9854]

RIN 1545–BO77

Arbitrage Investment Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the arbitrage investment restrictions under section 148 of the Internal Revenue Code (Code) applicable to tax-exempt bonds and other tax-advantaged bonds issued by State and local governments. The final regulations clarify existing regulations regarding the definition of ''investment-type property'' by expressly providing an exception for investment in capital projects that are used in furtherance of the public purposes of the bonds. The final regulations affect State and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

DATES: *Effective Date:* These final regulations are effective April 9, 2019.

Applicability Date: For the date of applicability, see § 1.148–11(n).

FOR FURTHER INFORMATION CONTACT: Lewis Bell at (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 148 of the Code. For interest on State or local bonds to be excluded from the gross income of the bondholder under section 103, the bonds must satisfy various eligibility requirements, including a requirement that the bonds not be arbitrage bonds as defined in section 148. Section 148(a) generally defines an ''arbitrage bond'' as any bond issued as part of an issue any portion of the proceeds of which are reasonably expected to be used or are intentionally used to acquire ''higher yielding investments'' or to replace funds so used. Section 148(b)(1) defines the term ''higher yielding investments'' as any ''investment property'' that produces a yield over the term of the issue that is materially higher than the yield on the issue. Section 148(b)(2) defines the term ''investment property'' to include any security (within the meaning of section 165(g)(2)(A) or (B)), any obligation, any annuity contract, certain residential rental property, and any ''investment-type property.'' Section 1.148–1(e)(1) of the Income Tax Regulations defines ''investment-type property'' to include any property (other than securities, obligations, annuity contracts, and covered residential rental property for family units under section 148(b)(2)(A), (B), (C), and (E)) ''that is held principally as a passive vehicle for the production of income.'' Section 1.148–1(e)(1) provides that, for this purpose, the production of income includes any benefit based on the time value of money.

Institutional investors have suggested clarification of the scope of the regulatory definition of investment-type property under § 1.148–1(e)(1) to ensure that the definition does not impede greater investment in public infrastructure.

The legislative history to the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, indicates that Congress intended to limit the scope of the arbitrage restriction on investment-type property so that it did not extend to investments in capital projects in furtherance of the public purposes of the bonds. In this regard, the House Report to the Tax Reform Act of 1986 included the following statement about the intended scope of the definition of investment-type property: ''The restriction would not apply, however, to real or tangible personal property acquired with bond proceeds for reasons

other than investment (*e.g.,* courthouse facilities financed with bond proceeds).'' H.R. Rep. No. 99–426, at 552 (1985), 1986–3 (vol. 2) C.B. 457; *see also* S. Rep. No. 99–313, at 844 (1986), 1986–3 (vol. 3) C.B. 682 (containing a statement substantially identical to that in the House report); H.R. Rep. No. 99–841, at II–747 (1986) (Conf. Rep.), 1986–3 (vol. 4) C.B. 608 (stating that the conference agreement follows the House bill and the Senate amendment on this restriction).

To clarify the scope of the investment-type property definition consistent with Congressional intent reflected in the legislative history, in a notice of proposed rulemaking published in the **Federal Register** (83 FR 27302; REG–106977–18) on June 12, 2018 (the Proposed Regulations), the Department of the Treasury (Treasury Department) and the IRS proposed an exception to the definition of investment-type property for certain capital projects that further the public purposes for which the tax-exempt bonds were issued.

The Treasury Department and the IRS solicited requests for a public hearing and written comments on the Proposed Regulations. No public hearing was held because no request for a hearing was received. The Treasury Department and the IRS received four public comments favoring finalization of the Proposed Regulations to allow greater capital investment in public infrastructure and did not receive any unfavorable public comments. Accordingly, the Treasury Department and the IRS adopt the Proposed Regulations, without substantive change, as final regulations by this Treasury Decision.

Explanation of Provisions

1. Section 1.148–1(e)(4): Exception to Investment-Type Property Definition for Certain Capital Projects

Section 1.148–1(e)(4) of the Final Regulations provides that investment-type property does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142, such as a public road, financed with private activity bonds.

2. Applicability Dates and Reliance

The amendments to the definition of investment-type property in the final regulations apply to bonds sold on or after July 8, 2019. Issuers may apply the provisions of the final regulations to bonds that are sold before July 8, 2019.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Lewis Bell and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.148–0(c) is amended by adding entries for §§ 1.148–1(e)(4) and 1.148–11(n) to read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) * * *

§ 1.148–1 Definitions and elections.

* * * * *

(e)* * *

(4) Exception for certain capital projects.

* * * * *

§ 1.148–11 Effective/applicability dates.

* * * * *

(n) Investment-type property.

■ **Par. 3.** Section 1.148–1 is amended by:

■ 1. Revising the first sentence of paragraph (e)(1).

■ 2. Adding paragraph (e)(4).

The revision and addition read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Except as otherwise provided in this paragraph (e), investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income.* * *

* * * * *

(4) *Exception for certain capital projects.* Investment-type property does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142, such as a public road, financed with private activity bonds.

* * * * *

■ **Par. 4.** Section 1.148–11 is amended by adding paragraph (n) to read as follows:

§ 1.148–11 Effective/applicability dates.

* * * * *

(n) *Investment-type property.* Section 1.148–1(e)(1) and (4) apply to bonds sold on or after July 8, 2019. An issuer may apply the provisions of § 1.148–1(e)(1) and (4) to bonds sold before July 8, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Editorial Note: This document was received for publication by the Office of the Federal Register on April 3, 2019.

[FR Doc. 2019–06937 Filed 4–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[TD 9855]

RIN 1545–BO80

Regulations To Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and To Update the Abatement Rules for Section 4966 and 4967 Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations specifying which return to use to pay certain excise taxes and the time for filing the return. The regulations also implement the statutory addition of two excise taxes to the first-tier taxes subject to abatement. These regulations affect applicable tax-exempt organizations and their related organizations, applicable educational institutions, sponsoring organizations that maintain certain donor advised funds, fund managers of such sponsoring organizations, and certain donors, donor advisors, and persons related to a donor or donor advisor of a donor advised fund.

DATES:

Effective date: These regulations are effective on April 9, 2019. *Applicability date:* These regulations apply on and after April 9, 2019. See also § 53.6071–1(j)(3).

FOR FURTHER INFORMATION CONTACT: Amber L. MacKenzie, (202) 317–4086 or Ward L. Thomas, (202) 317–6173 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 26 CFR part 53 under chapter 42, subtitle D, section 4963 and chapter 61, subtitle F, sections 6011 and 6071 of the Internal Revenue Code (Code), to specify the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; to specify the time for filing that return; and to conform the regulations to the statutorily expanded definition of the first-tier taxes subject to abatement under section 4962.

On November 7, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–107163–18) in the **Federal Register** (83 FR 55653) setting forth proposed regulations under sections 6011 and 6071. The proposed regulations specified Form 4720,''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,'' as the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; required that a person (including a governmental entity) required to file a return to report such tax file Form 4720 by the 15th day of the 5th month after the end of the person's taxable year; and added sections 4966 and 4967 to the first-tier taxes subject to abatement under section 4962.

Only one comment from the public was received, which did not raise any concerns or make any recommendations specific to the proposed regulation, and no hearing was requested or held. Therefore, the proposed regulations are adopted without change by this Treasury decision. (All comments are available at *www.regulations.gov* or upon request.)

Explanation of Provisions

1. Section 4962 Abatement

These final regulations add section 4966 and section 4967 excise taxes to the definitions of ''first tier tax'' and ''taxable event'' in § 53.4963–1. Qualified first tier taxes are subject to abatement under section 4962.

2. Requirement To File a Form 4720

These final regulations amend § 53.6011–1(b) to provide that persons (including governmental entities) that are liable for section 4960, 4966, 4967, or 4968 excise taxes are required to file a return on Form 4720.

3. Deadline for Filing a Form 4720

Under § 53.6071–1(i) of these final regulations, a person required to file a Form 4720 to report an excise tax under section 4960, 4966, 4967, or 4968 must file a Form 4720 by the 15th day of the fifth month after the end of the person's taxable year during which the excise tax liability was incurred.

4. Effective/Applicability Date

These regulations are effective on April 9, 2019. These regulations apply on and after April 9, 2019. See also § 53.6071–1(j)(3).

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *http://www.irs.gov* or contact the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the timing and filing of Form 4720 for persons liable for the specified excise taxes and who have a statutory filing obligation. Completing the applicable portion of the Form 4720 imposes little incremental burden in time or expense as compared to any other filing method.

In addition, a person may already be required to file the Form 4720 under the existing final regulations in §§ 53.6011–1 and 53.6071–1 if it is liable for another excise tax for which filing of the Form 4720 is required. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

Drafting Information

The principal authors of these regulations are Amber L. MacKenzie and Ward L. Thomas of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Tax). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 53.4963–1 [Amended]

■ **Par. 2.** Section 53.4963–1 is amended by:
■ 1. In paragraph (a), removing the language ''4958, 4971'' and adding ''4958, 4966, 4967, 4971'' in its place.
■ 2. In paragraph (c), removing the language ''4958, 4971'' and adding ''4958, 4966, 4967, 4971'' in its place.

■ **Par. 3.** Section 53.6011–1(b) is amended by:
■ 1. Revising the first sentence.
■ 2. Removing from the third sentence the language ''4958(a), or 4965(a),'' and adding ''4958(a), 4960(a), 4965(a), 4966(a), or 4967(a),'' in its place.

The revision reads as follows:

§ 53.6011–1 General requirement of return, statement or list.

* * * * *

(b) Every person (including a governmental entity) liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4955(a), 4958(a), 4959, 4960(a), 4965(a), 4966(a), 4967(a), or 4968(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) shall file an annual return on Form 4720,''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,'' and shall include therein the information required by such form and the instructions issued with respect thereto. * * *

* * * * *

§ 53.6071–1 [Amended]

■ **Par. 4.** Section 53.6071–1 is amended by:
■ 1. Redesignating paragraph (i) as paragraph (j).
■ 2. Adding new paragraphs (i) and (j)(3).

The additions read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(i) *Taxes under section 4960, 4966, 4967, or 4968.* A person (including a governmental entity) required by § 53.6011–1(b) to file a return for a tax imposed by section 4960(a), 4966(a), 4967(a), or 4968(a) in a taxable year must file the Form 4720 on or before the 15th day of the fifth month after the end of the person's taxable year (or, if the person has not established a taxable year for Federal income tax purposes, the person's annual accounting period).

(j) * * *

(3) Paragraph (i) of this section applies on and after April 9, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: March 25, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–07010 Filed 4–5–19; 11:15 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9856]

RIN 1545–BN63

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation that authorizes the disclosure of specified items of return information to the Bureau of the Census (Census Bureau). This regulation finalizes a proposed regulation cross-referencing a temporary regulation that was made pursuant to a request from the Secretary of Commerce. This final regulation requires no action by taxpayers and has no effect on their tax liabilities. No taxpayers are likely to be affected by the disclosures authorized by this guidance.

DATES:

Effective date: This regulation is effective on April 9, 2019.

Applicability date: For dates of applicability, see § 301.6103(j)(1)–1(e).

FOR FURTHER INFORMATION CONTACT: William Rowe, (202) 317–6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 (Procedure and Administration Regulations). Section 6103(j)(1)(A) of the Internal Revenue Code authorizes the Secretary of the Treasury (Secretary) to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary may prescribe by regulation to officers and employees of the Census Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the existing regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

By letter dated August 2, 2016, the Secretary of Commerce requested amendments to § 301.6103(j)(1)–1 to allow disclosure of several additional items of return information to the Census Bureau for purposes of its economic statistics program, structuring the censuses, and related program evaluations. The Secretary of Commerce's letter lists the additional items of return information requested based on the Census Bureau's specific need for each item of information. The Secretary of Commerce asserted that good cause exists to amend § 301.6103(j)(1)–1 to add these additional items to the list of items of return information that may be disclosed to the Census Bureau. The Department of the Treasury (Treasury Department) and the IRS agree that amending existing regulations to permit disclosure of these items to the Census Bureau is appropriate to meet the needs of the Census Bureau.

On December 9, 2016, a temporary regulation (TD 9802) was published in the **Federal Register** (81 FR 89004). The text of the temporary regulation also serves as the text of the proposed regulation set forth in a notice of proposed rulemaking (REG–133353–16) published in the **Federal Register** on the same day (81 FR 89022). The preamble to the temporary regulation describes the categories of information requested by the Secretary of Commerce. No public hearing was requested or held. No comments were received in response to the notice of proposed rulemaking.

Accordingly, the proposed regulation, the contents of which are described in the following Explanation of Provisions, is adopted by this Treasury decision without change, and the corresponding temporary regulation is removed, applicable to disclosures on or after December 9, 2016.

Explanation of Provisions

The proposed regulation authorized disclosure of additional expense items

from business tax returns in order to improve the expense data that is collected by the Census Bureau. Specifically, the proposed regulation authorized disclosure of the following enumerated components of total expenses or total deductions from business tax returns (Forms 1065, Forms in the 1120 series, and Form 1040, Schedule C, E or C/EZ): (1) Repairs (and maintenance) expense; (2) rents (or lease) expense; (3) taxes and licenses expense; (4) interest expense, including mortgage or other interest; (5) depreciation expense; (6) depletion expense; (7) advertising expense; (8) pension and profit-sharing plans (retirement plans) expense; (9) employee benefit programs expense; (10) utilities expense; (11) supplies expense; (12) contract labor expense; and (13) management (and investment advisory) fees. The proposed regulation also authorized disclosure of purchases from Form 1125–A and the following additional items from Form 1040, Schedule C: (1) Materials and supplies; and (2) purchases less cost of items withdrawn for personal use.

The proposed regulation also authorized disclosure of additional items of return information from business tax returns for the purpose of directing a high proportion of research and development surveys towards businesses with known research activities. Specifically, the proposed regulation authorized disclosure of additional items of return information from Forms 6765 (when filed with corporation income tax returns): (1) Cycle posted; and (2) the research tax credit amount to be carried over to a business return, schedule, or form.

The proposed regulation also authorized disclosure of additional items of return information for purposes of maintaining a centralized, continuous Business Register that comprehensively lists and characterizes United States business establishments and their domestic parent enterprises. Specifically, the proposed regulation authorized disclosure of additional items of return information from employment tax returns: (1) If a business has closed or stopped paying wages; (2) final date a business paid wages; and (3) if a business is a seasonal employer and does not have to file a return for every quarter of the year. The proposed regulation also authorized disclosure of the electronic system filing indicator from business tax returns and the cycle from the IRS's Business Master Files.

The proposed regulation also authorized disclosure of additional items of return information for purposes of modeling firm survival for production of statistics on business dynamics. Specifically, the proposed regulation authorized disclosure of additional items of return information from business tax returns: (1) Dividends, including ordinary and qualified; and (2) type of REIT (from Form 1120–REIT).

The proposed regulation also authorized disclosure of additional items of return information for purposes of the Survey of Business Owners. Specifically, the proposed regulation authorized disclosure of the following additional items of return information from Form 1065, Schedule K–1: (1) Publicly-traded partnership indicator; (2) partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and (3) ordinary business income (loss). The proposed regulation also authorized disclosure of ordinary business income (loss) from Forms 1120S, Schedule K–1.

Finally, the proposed regulation authorized disclosure of additional items of return information for purposes of developing and preparing the Quarterly Financial Report. Specifically, the proposed regulation authorized disclosure of the following additional items of return information from Forms 1120–REIT: (1) Type of Real Estate Investment Trust (''REIT''); and (2) gross rents from real property. The proposed regulation also authorized disclosure of the corporation's method of accounting from Form 1120F and the total amount reported from Form 1096.

The proposed regulation also amended language in the existing regulations to clarify that the TD 9500, which was published in the **Federal Register** (75 FR 52458), authorized disclosure only of categorical information for total qualified research expenses from Forms 6765. In accordance with the preamble to TD 9500, the existing regulations do not authorize the disclosure of the exact amount of total research expenses as reported on Form 6765. By letter dated February 6, 2006, the Secretary of Commerce requested disclosure of categorical information on total qualified research expenses in three ranges: Greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; and, greater than or equal to $3 million. The proposed regulation amended the existing regulations to more clearly reflect the categorical nature of the disclosure of total research expenses from Form 6765.

Lastly, the proposed regulation also removed duplicate paragraphs contained in the existing regulations. Under the existing regulations, each of the following items of return information from business-related returns was authorized for disclosure by two identical paragraphs: Social Security tip income; total Social Security taxable earnings; and gross distributions from employer-sponsored and individual retirement plans from Form 1099–R. Because there is no need for duplicate paragraphs that authorize disclosure of the same items of return information for the same purpose, the proposed regulation removed the duplicate paragraphs.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is William Rowe, Office of the Associate Chief Counsel (Procedure & Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by:
■ 1. Revising paragraph (b)(2)(iii)(I) and adding paragraphs (b)(2)(iii)(K) through (M);
■ 2. Revising paragraphs (b)(3)(v) and (b)(3)(xxv) through (xxx);
■ 3. Adding paragraphs (b)(3)(xxxi) through (xxxv) and (b)(6)(i)(C) through (E); and
■ 4. Revising paragraph (e).

The revisions and additions read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(I) Total taxable wages paid for purposes of chapter 21;

* * * * *

(K) If a business has closed or stopped paying wages;

(L) Final date a business paid wages; and

(M) If a business is a seasonal employer and does not have to file a return for every quarter of the year;

* * * * *

(3) * * *

(v) Total expenses or deductions, including totals of the following components thereof:

(A) Repairs (and maintenance) expense;

(B) Rents (or lease) expense;

(C) Taxes and licenses expense;

(D) Interest expense, including mortgage or other interest;

(E) Depreciation expense;

(F) Depletion expense;

(G) Advertising expense;

(H) Pension and profit-sharing plans (retirement plans) expense;

(I) Employee benefit programs expense;

(J) Utilities expense;

(K) Supplies expense;

(L) Contract labor expense; and

(M) Management (and investment advisory) fees.

* * * * *

(xxv) From Form 6765 (when filed with corporation income tax returns)—

(A) Indicator that total qualified research expenses is greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; or, greater than or equal to $3 million;

(B) Cycle posted; and

(C) Research tax credit amount to be carried over to a business return, schedule, or form.

(xxvi) Total number of documents reported on Form 1096 transmitting Forms 1099–MISC.

(xxvii) Total amount reported on Form 1096 transmitting Forms 1099–MISC.

(xxviii) Type of REIT.

(xxix) From Form 1125–A—purchases.

(xxx) From Form 1040, Schedule C—

(A) Purchases less cost of items withdrawn for personal use; and

(B) Materials and supplies.

(xxxi) Electronic filing system indicator.

(xxxii) Posting cycle date relative to filing.

(xxxiii) Dividends, including ordinary or qualified.

(xxxiv) From Form 1120S, Schedule K–1—ordinary business income (loss).

(xxxv) From Form 1065, Schedule K–1—

(A) Publicly-traded partnership indicator;

(B) Partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and

(C) Ordinary business income (loss).

* * * * *

(6) * * *

(i) * * *

(C) From Form 1120–REIT—

(*1*) Type of REIT; and

(*2*) Gross rents from real property;

(D) From Form 1120F—corporation's method of accounting.

(E) From Form 1096—total amount reported.

* * * * *

(e) *Applicability date.* Paragraphs (b)(2)(iii)(I), (b)(2)(iii)(K) through (b)(2)(iii)(M), (b)(3)(v), (b)(3)(xxv) through (b)(3)(xxxv), and (b)(6)(i)(C) through (b)(6)(i)(E) of this section apply to disclosure to the Bureau of the Census made on or after December 9, 2016. For rules that apply to disclosure to the Bureau of the Census before December 9, 2016, see 26 CFR 301.6103(j)(1)–1 (revised as of April 1, 2016).

§ 301.6103(j)(1)–1T [Removed]

■ **Par. 3.** Section 301.6103(j)(1)–1T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: March 19, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–07043 Filed 4–5–19; 4:15 pm]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 61

RIN 1110–AA32

Federal Bureau of Investigation's National Environmental Policy Act Regulations

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is promulgating regulations establishing the Federal Bureau of Investigation's (FBI's) National Environmental Policy Act (NEPA) procedures. These regulations establish a process for implementing NEPA, Executive Order 11514, Executive Order 12114, and Council on Environmental Quality (CEQ) and Department of Justice (DOJ) regulations for implementing the procedural provisions of NEPA.

DATES: *Effective date:* May 9, 2019.

FOR FURTHER INFORMATION CONTACT: Catherine Shaw, FBI Occupational Safety and Environmental Programs (OSEP) Unit Chief; 935 Pennsylvania Avenue NW, Room WB–460, Washington, DC 20535; (202) 436–7500.

SUPPLEMENTARY INFORMATION: On May 24, 2016, the FBI published a Notice of Proposed Rulemaking (NPRM) setting forth the NEPA procedures that are the subject of this final rule. *See* 81 FR 32688 (2016). The NPRM provided for a comment period ending July 25, 2016. No comments were received.

CEQ's NEPA implementing regulations contained in 40 CFR parts 1500–1508 require each Federal agency to adopt procedures (40 CFR 1507.3) to ensure that decisions are made in accordance with the policies and purposes of NEPA (40 CFR 1505.1). DOJ has established such policies and procedures at 28 CFR part 61. The FBI NEPA regulations supplement DOJ's procedures to ensure that environmental considerations are fully integrated into the FBI's mission and activities.

The FBI regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process in the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily comprehensible by the public and all parties involved in implementation of the proposed action.

The FBI NEPA regulations are not intended to serve as a comprehensive NEPA guide, but will serve as a framework for the FBI NEPA Program. The FBI plans to apply its NEPA regulations in conjunction with NEPA, the CEQ regulations (40 CFR parts 1500–1508), DOJ implementing regulations (28 CFR part 61), and all other applicable environmental regulations, executive orders, and statutes developed for the protection of the environment.

The FBI will, as appropriate, keep the public informed of the FBI NEPA Program and NEPA actions and ensure that relevant environmental documents, comments, and responses accompany proposals through all levels of decision making (40 CFR 1505.1(d)). The FBI's NEPA Program will be implemented primarily by the following key persons within the FBI:

(a) The FBI Director will maintain signature authority over all Findings of No Significant Impact (FONSIs) and Records of Decision (RODs).

(b) The *Environmental Executive/Bureau Designated Environmental, Safety and Health Official (DESHO)* will offer recommendations to the FBI Director regarding the disposition of all FONSIs and RODs; oversee the FBI NEPA Program; ensure that NEPA reviews are initiated as early as possible in the project planning process; ensure that decisions are made in accordance with the general policies and purposes of NEPA; and use his or her best efforts to ensure that sufficient funds are available to perform NEPA management-related planning, actions, and reporting. These responsibilities may be delegated to the Program Deputy Bureau DESHO.

(c) The *Program Deputy Bureau DESHO* will designate and assign duties to the FBI NEPA Program Manager; ensure that the FBI NEPA Program is coordinated with other environmental policies and directives; review the FBI NEPA Program metrics; and exercise additional authority as delegated by the Environmental Executive/Bureau DESHO.

(d) The *FBI NEPA Program Manager* will serve as the FBI's primary, centralized NEPA contact; provide for overall development, implementation, coordination, administration, and quality assurance measures associated with the FBI NEPA Program; advise FBI employees on NEPA matters; establish and ensure implementation of FBI-wide NEPA policy, guidance, and training; and review NEPA documentation.

(e) The *Deputy Bureau DESHOs* are heads of the FBI branches, divisions, or offices reporting directly to the FBI Deputy Director or Associate Deputy Director who, within their span of control, will ensure the NEPA Program is properly implemented and managed; use their best efforts to ensure that sufficient funds within their branches, divisions, and offices are available to perform NEPA management-related planning, actions, and reporting; and assign staff to fill NEPA roles as required.

Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

The FBI has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly, this rule has not been reviewed by the Office of Management and Budget. In addition, because this rule is not ''significant,'' under Executive Order 12866, it is not subject to the requirements of Executive Order 13771, which requires agencies to eliminate two regulations for each new one adopted.

Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

DOJ has assessed the costs and benefits associated with implementation of this rule and believes that the regulatory approach selected maximizes net benefits by better enabling the FBI to comply with NEPA. Further benefits associated with implementation of this rule are a streamlined approach to performing NEPA reviews, which is expected to lead to a reduction in delay and excessive paperwork; enhanced environmental awareness; collaborative and participatory public involvement; clear compliance guidelines resulting in reduced liability risk; and enhanced cost savings arising from fewer requirements to prepare Environmental Assessments (EAs) where projects are covered by categorical exclusions (CATEXs).

The FBI contracts out, on average, 20 EAs annually for actions that would be covered by the CATEXs instated by the rule. The average contracting costs associated with development of each of these EAs is approximately $50,000. Therefore, the rule would result in an annual cost savings of approximately $1,000,000 in contract payouts. The FBI anticipates that its own staffing costs with regard to NEPA compliance will remain roughly the same upon adoption of the new rule, as FBI personnel will still be involved in reviewing projects and developing/implementing a NEPA compliance strategy for each one.

The exact impact of the rule on staffing and funding requirements cannot be calculated due to uncertainty about the number of future projects and the level at which environmental review will occur (CATEX, EA, or Environmental Impact Statement (EIS)). However, as discussed in the preceding paragraphs, the FBI estimates a net annual cost savings of up to $1,000,000.

Executive Order 13132—Federalism

This regulation 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. In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

DOJ, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a substantial economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not substantially or uniquely affect small governments. Therefore, no action was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This

rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or have substantial adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

The FBI regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process in the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily comprehensible by the public and all parties involved in implementation of the proposed action. A CATEX is a category of actions which, barring extraordinary circumstances, does not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. The estimated average document length is 15 pages for an EA and 150 pages for an EIS. EAs, EISs, and their associated administrative records must be retained for at least six years after signature of the NEPA decision document. By contrast, a CATEX requires either no documentation or very brief documentation (records of environmental consideration documenting CATEXs are typically only a few pages long). The estimated total annual NEPA documentation burden associated with this rulemaking is unknown at this time because of the uncertainty of the number of projects that will require various levels of NEPA review.

National Environmental Policy Act

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *United States Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

List of Subjects in 28 CFR Part 61

Environmental protection; Environmental impact statements.

Authority and Issuance

Accordingly, part 61 of title 28 of the Code of Federal Regulations is amended as follows:

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order 11991.

■ 2. Add Appendix F to part 61 to read as follows:

Appendix F to Part 61—Federal Bureau of Investigation Procedures Relating to the Implementation of the National Environmental Policy Act

1. Authority

These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, regulations of the Department of Justice (DOJ), 28 CFR part 61, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.,* and Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. Purpose

The Federal Bureau of Investigation (FBI) NEPA Program has been established to assist the FBI in integrating environmental considerations into the FBI's mission and activities. The FBI NEPA regulations have been developed to supplement CEQ and DOJ NEPA regulations by outlining internal FBI policy and procedures. Through these provisions, the FBI shall promote compliance with NEPA and CEQ's implementing regulations, encourage environmental sustainability by integrating environmental considerations into mission and planning activities, and ensure that environmental analyses reflect consideration of non-regulatory requirements included in Federal orders, directives, and policy guidance.

3. Agency Description

The FBI is an intelligence-driven national security and law enforcement component within DOJ. The FBI's mission is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to Federal, state, municipal, and international agencies and partners. General types of FBI actions include:

(a) Operational activities, including the detection, investigation, and prosecution of crimes against the United States and the collection of intelligence.

(b) Training activities, including the training of Federal, state, local, and foreign law enforcement personnel.

(c) Real estate activities, including acquisitions and transfers of land and facilities and leasing.

(d) Construction, including new construction, renovations, repair, and demolition of facilities, infrastructure, utilities systems, and other systems.

(e) Property maintenance and management activities, including maintenance of facilities, equipment, and grounds and management of natural resources.

(f) Administrative and regulatory activities, including personnel management, procurement of goods and services, and preparation of regulations and policy guidance.

4. NEPA Documentation and Decision Making

The FBI will use the NEPA process as a tool to ensure an interdisciplinary review of its actions and to ensure that impacts of those actions on the quality of the human environment are given appropriate consideration in FBI decisions; to identify and assess reasonable alternatives to its actions; and to facilitate early and open communication, when practicable, with the public and other agencies and organizations.

(a) *Level of NEPA Analysis.* The level of NEPA analysis will depend on the context and intensity of the environmental impacts associated with the proposed action. Environmental Assessments (EAs) and Environmental Impact Statements (EISs) should include a range of reasonable alternatives, as well as other alternatives that are eliminated from detailed study with a

brief discussion of the reasons for eliminating them. If there are no reasonable alternatives, the EA or EIS must explain why no reasonable alternative exists. The decision maker must consider all the alternatives discussed in the EA or EIS. The decision maker may choose an alternative that is not expressly described in a draft EA or EIS, provided it is qualitatively within the spectrum of alternatives that were discussed in the draft.

(b) *Responsibility for NEPA Analysis.* (1) The FBI's responsibility for NEPA review of actions shall be determined on a case-by-case basis depending on the extent to which the entire project is within the FBI's jurisdiction and on other factors. For example, factors relevant to whether construction of a facility is within FBI's jurisdiction include the following: The extent of FBI control and funding in the construction or use of the facility, whether the facility is being built solely for FBI requirements, and whether the project would proceed without FBI action.

(2) The extent of the FBI's responsibility for NEPA review of joint Federal actions, where the FBI and another Federal agency are cooperating on a project, shall be determined on a case-by-case basis depending on which agency is designated as the lead agency and which is the cooperating agency.

(3) In cases where FBI actions are a component of a larger project involving a private action or an action by a local or state government, the FBI's proposed action analyzed in the NEPA document shall include only the portions of the project over which the FBI has sufficient control and responsibility to warrant Federal review. However, the cumulative impacts analysis shall account for past, present, and reasonably foreseeable future activities affecting the same natural resources as the FBI project. When actions are planned by private or other non-Federal entities, the FBI shall provide the potential applicant reasonably foreseeable requirements for studies or other information for subsequent FBI action. In addition, the FBI shall consult early with appropriate state and local agencies, tribal entities, interested private persons, and organizations when its own involvement is reasonably foreseeable.

(4) Whenever appropriate and practicable, the FBI shall incorporate by reference and rely upon the environmental analyses and reviews of other Federal, tribal, state, and local agencies.

5. Categorical Exclusions

(a) *Categorical Exclusion (CATEX) Criteria (40 CFR 1508.4).* A CATEX is a category of actions which, barring extraordinary circumstances, does not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. Such activities are not excluded from compliance with other applicable Federal, state, or local environmental laws. To qualify for a CATEX, an action must meet all of the following criteria:

(1) The proposed action fits entirely within one or more of the CATEXs;

(2) The proposed action has not been segmented and is not a piece of a larger action. For purposes of NEPA, actions must be considered in the same review if it is reasonably foreseeable that the actions are connected (*e.g.,* where one action depends on another).

(3) No extraordinary circumstances exist that would cause the normally excluded proposed action to have significant environmental effects. Extraordinary circumstances are assumed to exist when the proposed action is likely to involve any of the following circumstances:

(i) An adverse effect on public health or safety;

(ii) An adverse effect on federally listed endangered or threatened species, marine mammals, or critical habitat;

(iii) An adverse effect on archaeological resources or resources listed or determined to be eligible for listing in the National Register of Historic Places;

(iv) An adverse effect on an environmentally sensitive area, including floodplains, wetlands, streams, critical migration corridors, and wildlife refuges;

(v) A material violation of a Federal, state, or local environmental law by the FBI;

(vi) An effect on the quality of the human or natural environment that is likely to be highly scientifically controversial or uncertain, or likely to involve unique or unknown environmental risks;

(vii) Establishment of precedents or decisions in principle for future actions that have the potential for significant impacts (*e.g.,* master plans, Integrated Natural Resource Management Plans, Integrated Cultural Resource Management Plans);

(viii) Significantly greater scope or size than normally experienced for a particular category of action;

(ix) Potential for substantial degradation of already existing poor environmental conditions. Also, initiation of a potentially substantial environmental degrading influence, activity, or effect in areas not already substantially modified; or

(x) A connection to other actions with individually insignificant, but cumulatively significant, impacts.

(b) *Documentation of CATEX usage.* As noted in paragraph (c) below, certain FBI actions qualifying for a CATEX have been predetermined to have a low risk of extraordinary circumstances and, as such, have been designated as not requiring preparation of a Record of Environmental Consideration (REC) Determination Form. A REC Determination Form must be prepared for all other FBI actions subject to NEPA review. The REC Determination Form shall determine if the proposed action falls within a category of actions that has been excluded from further NEPA review or if the action will require further analysis through an EA or EIS. The REC Determination Form shall also identify any extraordinary circumstances that require the FBI to perform an EA or an EIS for an action that would otherwise qualify for a CATEX.

(c) *List of No REC Determination Form Required (NR) FBI CATEXs.* (NR1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that does not result in changing the use of the space in such a way that could cause environmental effects or exceed the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(NR2) Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, contract administration, recordkeeping, budgeting, personnel actions, and travel.

(NR3) Decisions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent or control environmental impacts. This requirement excludes demolition actions.

(NR4) Preparation of policies, procedures, manuals, and other guidance documents for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and for which the applicability of the NEPA process will be evaluated upon implementation, either collectively or case by case.

(NR5) Grants of licenses, easements, or similar arrangements for use by vehicles (not to include substantial increases in the number of vehicles loaded); electrical, telephone, and other transmission and communication lines; and pipelines, pumping stations, and facilities for water, wastewater, stormwater, and irrigation; and for similar utility and transportation uses. Construction or acquisition of new facilities is not included.

(NR6) Acquisition, installation, operation, and maintenance of temporary equipment, devices, or controls necessary to mitigate effects of the FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

(i) Temporary sediment and erosion control measures required to meet applicable Federal, tribal, state, or local requirements;

(ii) Installation of temporary diversion fencing to prevent earth disturbances within sensitive areas during construction activities; and

(iii) Installation of temporary markers to delineate limits of earth disturbances in forested areas to prevent unnecessary tree removal.

(NR7) Routine flying operations and infrequent, temporary (fewer than 30 days) increases in aircraft operations up to 50 percent of the typical FBI aircraft operation rate.

(NR8) Proposed new activities and operations to be conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

(NR9) Conducting audits and surveys; data collection; data analysis; and processing,

permitting, information dissemination, review, interpretation, and development of documents. If any of these activities results in proposals for further action, those proposals must be covered by an appropriate CATEX or other NEPA analysis. Examples include:

(i) Document mailings, publication, and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions;

(ii) Studies, reports, proposals, analyses, literature reviews, computer modeling, and intelligence gathering and sharing;

(iii) Activities designed to support improvement or upgrade management of natural resources, such as surveys for threatened and endangered species or cultural resources; wetland delineations; and minimal water, air, waste, and soil sampling;

(iv) Minimally intrusive geological, geophysical, and geo-technical activities, including mapping and engineering surveys;

(v) Conducting facility audits, Environmental Site Assessments, and environmental baseline surveys; and

(vi) Vulnerability, risk, and structural integrity assessments of infrastructure.

(NR10) Routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines. Examples include:

(i) Office supplies and furniture;

(ii) Equipment;

(iii) Mobile assets (*i.e.,* vehicles, vessels, aircraft);

(iv) Utility services; and

(v) Deployable emergency response supplies and equipment.

(NR11) Routine use of hazardous materials (to include procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies. Examples include:

(i) Use of chemicals and low-level radionuclides for laboratory applications;

(ii) Refueling of storage tanks;

(iii) Appropriate treatment and disposal of medical waste;

(iv) Temporary storage and disposal of solid waste;

(v) Disposal of radiological waste through manufacturer return and recycling programs; and

(vi) Hazardous waste minimization activities.

(NR12) Acquisition, installation, maintenance, operation, or evaluation of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities or to enhance the physical security of existing critical assets. Examples include:

(i) Low-level x-ray devices;

(ii) Cameras and biometric devices;

(iii) Passive inspection devices;

(iv) Detection or security systems for explosive, biological, or chemical substances;

(v) Access controls, screening devices, and traffic management systems;

(vi) Motion detection systems;

(vii) Impact-resistant doors and gates;

(viii) Diver and swimmer detection systems, except sonar; and

(ix) Blast and shock impact-resistant systems for land-based and waterfront facilities.

(NR13) Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, trash collecting, facility cleaning, and snow removal.

(NR14) Recreation and welfare activities (*e.g.,* picnics and Family Day).

(NR15) Training FBI personnel or persons external to the FBI using existing facilities and where the training occurs in accordance with applicable permitting requirements and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, radiological, or explosive agents, except when conducted at a location designed and constructed to accommodate those materials and their associated hazards. Examples include:

(i) Administrative or classroom training;

(ii) Tactical training, including training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response;

(iii) Chemical, biological, explosive, or hazardous material handling training;

(iv) Vehicle, aircraft, and small boat operation training;

(v) Small arms and less-than-lethal weapons training;

(vi) Security specialties and terrorist response training;

(vii) Crowd control training, including gas range training;

(viii) Enforcement response, self-defense, and interdiction techniques training; and

(ix) Fingerprinting and drug analysis training.

(NR16) Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack or a natural or manmade disaster, where the activity in question is conducted in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of live chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades or flash bang devices used to simulate an attack during exercises), unless these exercises are conducted under the auspices of existing plans or permits that have undergone NEPA review.

(d) *List of REC Determination Form Required (R) FBI CATEXs.* (R1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that results in changing the use of the space in such a way that could cause changes to environmental effects, but does not result in exceeding the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(R2) Acquisition or use of space within an existing structure, by purchase, lease, or use agreement. This requirement includes structures that are in the process of construction or were recently constructed, regardless of whether the existing structure was built to satisfy an FBI requirement and the proposed FBI use would not exceed the carrying capacity of the utilities and infrastructure for the use and access to the space. This requirement also includes associated relocation of personnel, equipment, or assets into the acquired space.

(R3) Transfer of administrative control over real property, including related personal property, between another Federal agency and the FBI that does not result in a change in the functional use of the property.

(R4) New construction (*e.g.,* facilities, roads, parking areas, trails, solar panels, and wind turbines) or improvement of land where all of the following conditions are met:

(i) The site is in a developed or a previously disturbed area;

(ii) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area;

(iii) The construction or improvement will not result in exceeding the infrastructure capacity outside of FBI-managed property (*e.g.,* roads, sewer, water, and parking);

(iv) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings; and

(v) The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards and consistent with federally approved state coastal management programs.

(R5) Renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, airfields, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials such as polychlorinated biphenyls (PCBs), lead, or asbestos. Hazardous materials shall be disposed of at approved sites in accordance with Federal, state, and local regulations. Examples include the following:

(i) Realigning interior spaces of an existing building;

(ii) Adding a small storage shed to an existing building;

(iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, installation of low-flow plumbing fixtures, and installation of drip-irrigation systems;

(iv) Installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC's NEPA procedures allow for application of a CATEX; or

(v) Closing and demolishing a building not eligible for listing under the National Register of Historic Places.

(R6) Acquisition, installation, reconstruction, repair by replacement, and operation of utility (*e.g.,* water, sewer, electrical), communication (*e.g.,* data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, distribution systems, or facilities.

(R7) Acquisition, installation, operation, and maintenance of permanent equipment, devices, and/or controls necessary to mitigate effects of the FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

(i) Pollution prevention and pollution control equipment required to meet applicable Federal, tribal, state, or local requirements;

(ii) Installation of fencing, including security fencing, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow;

(iii) Installation and operation of lighting devices;

(iv) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees or native vegetation for use as a noise abatement measure; and

(v) Devices to protect human or animal life, such as raptor electrocution prevention devices, and fencing and grating to prevent accidental entry to hazardous or restricted areas.

(R8) Non-routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines.

(R9) Use of hazardous materials (to include procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies, but uncharacteristic of routine FBI use, reuse, recycling, and disposal of hazardous materials and waste. Examples include:

(i) Procurement of a new type of chemical or procurement of a larger quantity of a particular chemical than generally used by the FBI; and

(ii) Disposal of items that contain PCBs (*e.g.,* carpets, lighting, caulk).

(R10) Herbicide application and pest management, including registered pesticide application, in accordance with Federal, state, and local regulations.

(R11) Natural resource management activities on FBI-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation and control of non-indigenous species, excluding the application of herbicides.

6. Environmental Assessment

An EA is a concise public document for actions that do not meet the requirements for applying a CATEX, but for which it is unclear whether an EIS is required. An EA briefly provides evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI), and facilitates preparation of an EIS when one is required. The requirements and contents of an EA are described in 40 CFR 1508.9. Significance of impacts shall be determined based on the criteria outlined in 40 CFR 1508.27. The FBI will comment on other agencies' EAs when relevant to the FBI's mission, or where the FBI has jurisdiction by law or relevant special expertise.

(a) Examples of types of FBI actions that typically require an EA include the following:

(1) Long-term plans for FBI-managed properties and facilities.

(2) Proposed construction, land use, activity, or operation where it is uncertain whether the action will significantly affect environmentally sensitive areas.

(3) New activities for which the impacts are not known with certainty, but where the impacts are not expected to cause significant environmental degradation.

7. Environmental Impact Statement

An EIS is a detailed, written statement Federal agencies must prepare for major Federal actions that will significantly affect the quality of the human environment, or when an EA concludes that the significance threshold of the impacts associated with a proposed action would be crossed. An EIS describes effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) is published in the **Federal Register** as soon as practicable after a decision to prepare an EIS is made. The FBI may prepare an EIS without prior preparation of an EA. The format and content of an EIS are described in 40 CFR part 1502.

(a) A Record of Decision (ROD) is prepared at the time a decision is made regarding a proposal that is analyzed and documented in an EIS. The ROD will state the decision, discuss the alternatives considered, and state whether all practicable means to avoid or minimize environmental harms have been adopted or, if not, why they were not adopted. Where applicable, the ROD will also describe and adopt a monitoring and enforcement plan for any mitigation. The FBI will comment on other agencies' EISs when relevant to the FBI's mission, or where the FBI has jurisdiction by law or relevant special expertise.

(b) Examples of types of actions that typically require an EIS include the following:

(1) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas.

(2) Change in area, scope, type, and/or frequency of operations or training that will result in significant environmental effects.

(3) Actions where the effects of a project or operation on the human environment are likely to be highly scientifically uncertain, but are perceived to have potential for significant impacts.

8. Scoping

Scoping may be used for all NEPA documents in order to streamline the NEPA process by identifying significant issues and narrowing the scope of the environmental review process. The FBI may seek agencies with specialized expertise or authority in environmental planning requirements that may be beneficial to FBI mission planning and encourage such agencies to be cooperating agencies (40 CFR 1501.6, 1508.5). In cases where an EIS is prepared in response to a finding of significant impact following preparation of an EA, the EIS scoping process shall incorporate the results of the EA development process.

9. Public Involvement

The FBI may use such means as newspaper announcements, electronic media, and public hearings to disseminate information to potentially interested or affected parties about NEPA actions, as appropriate. When preparing an EIS, and in certain cases an EA, the FBI shall invite comment from affected Federal, tribal, state, and local agencies, and other interested persons in accordance with 40 CFR part 1503.

10. Mitigation

(a) Mitigation measures, such as those described in 40 CFR 1508.20, may be used to offset environmental impacts associated with implementation of an action. If a FONSI or ROD is based on mitigation measures, all mitigation measures stipulated in the EA or EIS must be implemented as described in the FONSI or ROD.

(b) Mitigation measures, where applicable, must be included as conditions in grants, permits, and relevant contract documents. Funding of actions shall be contingent on performance of mitigation measures, where such measures are identified in a FONSI or ROD. If mitigation is required, a mitigation monitoring plan shall be developed prior to the initiation of the proposed action. To the extent practicable, the FBI shall make available the progress or results of monitoring upon request by the public or cooperating/commenting agencies.

11. Programmatic, Tiered, and Supplemental NEPA Documents

(a) Programmatic EAs or EISs may be prepared to cover broad actions, such as programs or plans (*e.g.,* Master Plan EA).

(b) Tiered EAs or EISs may be prepared to cover narrower actions that are a component to previously prepared Programmatic EAs or EISs as described in 40 CFR 1508.28.

(c) Supplemental EAs or EISs shall be prepared when the FBI makes substantial changes to the proposed action that are relevant to environmental concerns; when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (*e.g.,* new study has revealed rare, threatened, and endangered species in the project vicinity); or when the FBI determines that the purposes of NEPA will be furthered by doing so.

(1) Supplemental EAs may either be prepared by tracking changes in the original EA or by preparing a separate document that only discusses the changes in the project scope and/or new information and the associated changes with regard to impacts. The process concludes with a decision regarding whether to issue a revised FONSI (using one of the methods listed in section 9 of these procedures) or a decision to prepare an EIS.

(2) Supplemental EISs are prepared in the same way as an EIS. If, however, a supplemental EIS is prepared within one year of filing the ROD for the original EIS, no new scoping process is required. The process

concludes with a decision regarding whether to issue a revised ROD.

Dated: April 3, 2019.

Rod J. Rosenstein,

Deputy Attorney General.

[FR Doc. 2019–06970 Filed 4–8–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0217]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes two security zones. One of the zones is a temporary fixed security zone for the receiving facility's mooring basin while the Liquefied Natural Gas Carrier (LNGC) CADIZ KNUTSEN is moored at the facility. The other zone is a moving security zone encompassing all navigable waters within a 500-yard radius around the LNGC CADIZ KNUTSEN while the vessel transits with cargo in the La Quinta Channel and Corpus Christi Ship Channel in Corpus Christi, TX. The security zones are needed to protect the vessel and its Liquified Natural Gas (LNG) cargo from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other potential causes. Entry of vessels and persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from April 9, 2019 until April 10, 2019. For the purposes of enforcement, actual notice will be used from April 3, 2019 until April 9, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0217 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Kevin Kyles, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5125, email *Kevin.L.Kyles@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
LNGC Liquefied Natural Gas Carrier
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by April 3, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with Liquefied Natural Gas Carrier (LNGC) CADIZ KNUTSEN between April 3, 2019 and April 10, 2019 will be a security concern while the vessel is moored at the receiving facility and within a 500-yard radius of the vessel while the vessel transits with cargo.

IV. Discussion of the Rule

This rule establishes two security zones around LNGC CADIZ KNUTSEN from April 3, 2019 through April 10, 2019. A fixed security zone will be in effect in the mooring basin bound by 27°52′53.38″ N, 097°16′20.66″ W on the northern shoreline; thence to 27°52′45.58″ N, 097°16′19.60″ W; thence to 27°52′38.55″ N, 097°15′45.56″ W; thence to 27°52′49.30″ N, 097°15′45.44″ W; thence west along the shoreline to 27°52′53.38″ N, 097°16′20.66″ W, while LNGC CADIZ KNUTSEN is moored. A moving security zone will cover all navigable waters within a 500-yard radius of the LNGC CADIZ KNUTSEN while the vessel transits outbound with cargo through the La Quinta Channel and Corpus Christi Ship Channel. Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi. Persons and vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and dates for these security zones.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of the Corpus Christi Ship Channel and La Quinta Channel, where the vessel traffic is usually low, for only 8 days, while the vessel is moored at the receiving

facility and during the vessel's transit while loaded with cargo. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary fixed security zone while LNGC CADIZ KNUTSEN is moored at the receiving facility mooring basin bound by 27°52′53.38″ N, 097°16′20.66″ W on the northern shoreline; thence to 27°52′45.58″ N, 097°16′19.60″ W; thence to 27°52′38.55″ N, 097°15′45.56″ W; thence to 27°52′49.30″ N, 097°15′45.44″ W; thence west along the shoreline to 27°52′53.38″ N, 097°16′20.66″ W, and a temporary moving security zone while the vessel transits with cargo within the La Quinta Channel and Corpus Christi Ship Channel, that will prohibit entry within 500-yard radius of LNGC CADIZ KNUTSEN. The zones will be enforced for only 8 days. These zones 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0217 to read as follows:

§ 165.T08–0217 Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX.

(a) *Location.* The following areas are security zones:

(1) The mooring basin bound by 27°52′53.38″ N, 097°16′20.66″ W on the northern shoreline; thence to 27°52′45.58″ N, 097°16′19.60″ W; thence to 27°52′38.55″ N, 097°15′45.56″ W; thence to 27°52′49.30″ N, 097°15′45.44″ W; thence west along the shoreline to 27°52′53.38″ N, 097°16′20.66″ W, while LNGC CADIZ KNUTSEN is moored.

(2) All navigable waters encompassing a 500-yard radius around the Liquefied Natural Gas Carrier (LNGC) CADIZ KNUTSEN while transiting outbound with cargo through the La Quinta

Channel and Corpus Christi Ship Channel.

(b) *Effective period.* This section is effective without actual notice from April 9, 2019 until April 10, 2019. For the purposes of enforcement, actual notice will be used from April 3, 2019 until April 9, 2019.

(c) *Period of enforcement.* This section will be enforced from the time LNGC CADIZ KNUTSEN moors and while the vessel is transiting outbound through the La Quinta Channel and Corpus Christi Ship Channel from April 3, 2019 through April 10, 2019.

(d) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into these temporary security zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons and vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and date for these security zones.

Dated: April 2, 2019.

E.J. Gaynor,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2019–06950 Filed 4–8–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0078; FRL–9991–94–Region 4]

Air Plan Approval; North Carolina; Miscellaneous Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (NCDEQ), through letters dated April 4, 2017, August 22, 2017, and September 28, 2018. These SIP revisions make amendments, most of which are structural and minor, to North Carolina's source testing rules. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule will be effective May 9, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0078. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Through letters dated April 4, 2017, August 22, 2017, and September 28, 2018, the State of North Carolina, through NCDEQ, submitted three SIP revisions for EPA approval.[1] These SIP revisions include structural amendments to 15A North Carolina Administrative Code (NCAC) 02D Section .0501—*Compliance with Emission Control Standards,* and typographical amendments to 15A NCAC 02D Section .0536—*Particulate Emissions from Electric Utility Boilers.*[2] Additionally, the SIP revisions incorporate, for primarily structural and organizational reasons, four new rules: 15A NCAC 02D Sections .2609—*Particulate Testing Methods,* .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur.* EPA has determined that a number of these changes to the North Carolina SIP are either structural or minor and ministerial and do not alter the meaning of any SIP provisions. EPA has also determined that all other changes are SIP-strengthening, and that all are consistent with federal regulations regarding source testing and are approvable pursuant to section 110 of the CAA.

The changes to the North Carolina SIP that are the subject of this final rulemaking, as well as EPA's analysis of the changes and rationale for approving them, are described in further detail in a notice of proposed rulemaking (NPRM) published on February 12, 2019 (84 FR 3381). Comments on the NPRM were due on or before March 14, 2019. EPA received no relevant comments on the proposed action. EPA is now taking final action to approve these revisions.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference under Subchapter 2D, of North Carolina's SIP, Sections .0501—*Compliance with Emission Control Standards,* .0536—*Particulate Emissions from Electric Utility Boilers,* .2609—*Particulate Testing Methods,* .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur,* all state effective June 1, 2008. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by

[1] EPA received the SIP revisions on April 28, 2017, September 6, 2017, and October 10, 2018, respectively.

[2] In the table of North Carolina regulations federally-approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Action

EPA is approving North Carolina's April 4, 2017, August 22, 2017, and September 28, 2018, SIP revisions. Specifically, EPA is approving, under Subchapter 2D of the North Carolina SIP, the addition of new Sections .2609, .2610, .2611, and .2617, as well as amendments to existing Sections .0501 and .0536. EPA is approving these SIP revisions because the Agency has determined that they are consistent with the CAA and will not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any other applicable requirement.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 29, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(c)(1) is amended in the table under ''Subchapter 2D Air Pollution Control Requirements'' by:

■ a. Revising the entries for ''Section .0501'' and ''Section .0536''; and

■ b. Adding entries, in numerical order, for ''Section .2609'', ''Section .2610'', ''Section .2611'', and ''Section .2617''.

The revisions and additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

[3] *See* 62 FR 27968 (May 22, 1997).

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0500 Emission Control Standards				
Section .0501	Compliance with Emission Control Standards.	6/1/2008	4/9/2019, [Insert citation of publication].	
*	*	*	*	*
Section .0536	Particulate Emissions from Electric Utility Boilers.	6/1/2008	4/9/2019, [Insert citation of publication].	
*	*	*	*	*
Section .2600 Source Testing				
*	*	*	*	*
Section .2609	Particulate Testing Methods.	6/1/2008	4/9/2019, [Insert citation of publication].	
Section .2610	Opacity	6/1/2008	4/9/2019, [Insert citation of publication].	
Section .2611	Sulfur Dioxide Testing Methods.	6/1/2008	4/9/2019, [Insert citation of publication].	
*	*	*	*	*
Section .2617	Total Reduced Sulfur	6/1/2008	4/9/2019, [Insert citation of publication].	
*	*	*	*	*

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[FR Doc. 2019–06882 Filed 4–8–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 181019966–9244–02]

RIN 0648–BI56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 2

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Abbreviated Framework Amendment 2 (Abbreviated Framework 2) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs) for vermilion snapper and black sea bass in the exclusive economic zone (EEZ) of the South Atlantic. The purpose of this final rule is to respond to the results of the latest stock assessments for the species and to help achieve optimum yield (OY) for vermilion snapper and black sea bass. Additionally, this final rule serves to announce the length of the South Atlantic black sea bass recreational fishing season for the 2019–2020 fishing year. NMFS announces that the length of the recreational fishing season for black sea bass in the Council's jurisdiction of the EEZ of the South Atlantic will extend throughout the species' April 1, 2019, through March 31, 2020, recreational fishing year.

DATES: This final rule is effective May 9, 2019. The black sea bass recreational season notification is effective from April 9, 2019, until 12:01 a.m., local time, April 1, 2020, unless changed by subsequent notification in the **Federal Register**.

ADDRESSES: Electronic copies of Abbreviated Framework 2, which includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review, may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-2-vermilion-snapper-and-black-sea-bass.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS SERO, telephone: 727–824–5305, email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes vermilion snapper and black sea bass, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 19, 2019, NMFS published a proposed rule for

Abbreviated Framework 2 and requested public comment (84 FR 4758). The proposed rule and Abbreviated Framework 2 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Abbreviated Framework 2 and implemented by this final rule is described below.

All weights described in this final rule are in round weight, unless otherwise specified.

In April 2018, Southeast Data, Assessment, and Review (SEDAR) standard stock assessments were completed for both South Atlantic vermilion snapper (SEDAR 55) and black sea bass (SEDAR 56). The Council's Scientific and Statistical Committee (SSC) reviewed both assessments at their May 2018 meeting, stated that they represented the best scientific information available, and provided the Council with acceptable biological catch (ABC) recommendations for the two species. Based on the results of the SEDAR 55 and SEDAR 56, NMFS determined that neither species was overfished or undergoing overfishing.

Recreational landings of snapper-grouper, including vermilion snapper and black seas bass are monitored through the Marine Recreational Information Program (MRIP). NMFS notes that as of January 1, 2018, there was a change to MRIP and a change in the estimation of recreational fishing effort. As a result of the changes to MRIP, the NMFS Southeast Fisheries Science Center (SEFSC) revised the vermilion snapper and black sea bass stock assessments (SEDAR 55 and 56) using the newly calibrated MRIP data. The Council's SSC reviewed the revised stock assessments at their October 2018 and February 2019 meetings. However, the SSC has not provided new ABC recommendations to the Council based on the revised assessments, and the SSC continues to discuss how to incorporate the revised MRIP data into stock assessments.

Management Measures Contained in This Final Rule

This final rule revises the commercial and recreational ACLs for South Atlantic vermilion snapper and black sea bass based on updated information from stock assessments.

Vermilion Snapper

The vermilion snapper ACL is allocated between the sectors into a current commercial ACL of 862,920 lb (391,414 kg) and a current recreational ACL of 406,080 lb (184,195 kg) that were set in Regulatory Amendment 18 to the FMP (78 FR 47574; September 5, 2013). The Council established the current sector allocations for vermilion snapper of 68 percent commercial and 32 percent recreational in Amendment 16 to the FMP (74 FR 30964; July 29, 2009). This final rule does not change these allocations.

Consistent with the results of SEDAR 55, and the ABC recommendations from the SSC subsequently accepted by the Council, this final rule increases the commercial and recreational ACLs for vermilion snapper. For the commercial sector, the ACL (commercial quota) is equally divided into two 6-month seasons of January through June and July through December each year.

This final rule will set each commercial seasonal quota at 483,658 lb (219,384 kg), gutted weight, 536,860 lb (243,516 kg) for the 2019 fishing year; 452,721 lb (205,351 kg), gutted weight, 502,520 lb (227,939 kg) for the 2020 fishing year; 431,279 lb (195,625 kg), gutted weight, 478,720 lb (217,144 kg) for the 2021 fishing year; 417,189 lb (189,234 kg), gutted weight, 463,080 lb (210,050 kg) for the 2022 fishing year; and 409,225 lb (185,621 kg), gutted weight, 454,240 lb (206,040 kg) for the 2023 and subsequent fishing years.

This final rule will set the recreational ACL at 455,207 lb (206,478 kg), gutted weight, 505,280 lb (229,191 kg) for the 2019 fishing year; 426,090 lb (193,271 kg), gutted weight, 472,960 lb (214,531 kg) for the 2020 fishing year; 405,910 lb (184,118 kg), gutted weight, 450,560 lb (204,552 kg) for the 2021 fishing year; 392,649 lb (178,103 kg), gutted weight, 435,840 lb (197,694 kg) for the 2022 fishing year; and 385,520 lb (174,869 kg), gutted weight, 427,520 lb (193,920 kg) for the 2023 and subsequent fishing years.

The vermilion snapper commercial sector has experienced in-season fishing closures every year since 2009, regardless of the amount of the commercial quota. If the catch rates of vermilion snapper in the commercial sector continue as expected, the revised seasonal quotas are still projected to result in an in-season closure during each of the two 6-month seasons as a result of the seasonal quotas being reached. However, the increase to the commercial ACL is expected to extend the commercial fishing season up to 48 days over the entire 2019 fishing year. NMFS expects the projected increase in the number of days for the commercial season to then progressively decrease each year after 2019, corresponding with the annual declining ACL values. By 2023, the revised commercial ACL is expected to result in up to 5 additional fishing days. NMFS does not expect the revised recreational ACL to be reached, and expects that the recreational sector will remain open for the entire fishing year.

Black Sea Bass

The current black sea bass commercial and recreational ACLs were implemented in 2013 through Regulatory Amendment 19 to the FMP (78 FR 58249; September 23, 2013). The current commercial ACL is 755,274 lb (342,587 kg) and the recreational ACL is 1,001,176 lb (454,126 kg).

The ACLs are based on the sector allocation ratio developed by the Council for black sea bass (43 percent commercial and 57 percent recreational) as established in Amendment 13C to the FMP (71 FR 55096; October 23, 2006). This final rule does not change these allocations.

Consistent with the results of SEDAR 56 and the ABC recommendations from the SSC accepted by the Council, this final rule reduces the commercial and recreational ACLs for black sea bass. The commercial ACL will be 276,949 lb (125,622 kg), gutted weight, 326,800 lb (148,234 kg) for the 2019 fishing year; 243,788 lb (110,580 kg), gutted weight, 287,670 lb (130,485 kg) for the 2020 fishing year; and 234,314 lb (106,283 kg), gutted weight, 276,490 lb (125,414 kg) for 2021 and subsequent fishing years.

Because the fishing year for the black sea bass recreational sector is from April 1 through March 31, the recreational ACLs are described as yearly combinations. The revised black sea bass recreational ACL will take effect during the 2019–2020 fishing year, which began on April 1, 2019. The current recreational ACLs that are effective for the 2018–2019 fishing year are 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg). The revised recreational ACLs are 367,119 lb (166,522 kg), gutted weight, 433,200 lb (196,496 kg) for the 2019–2020 fishing year; 323,161 lb (146,583 kg), gutted weight, 381,330 lb (172,968 kg) for the 2020–2021 fishing year; and 310,602 lb (140,887 kg), gutted weight, 366,510 lb (166,246 kg) for the 2021–2022 and subsequent fishing years.

Since 2015, black sea bass total landings have not exceeded 40 percent of the current combined commercial and recreational ACLs, and the last fishing season closures for the commercial and recreational sectors occurred in 2012 and 2011, respectively. Based on the projected future commercial landings of black sea bass for the 2019 fishing year, NMFS does not expect the revised commercial ACL to be reached, and anticipates that the

commercial sector will remain open for the entire fishing year. However, in the 2020 and 2021 fishing years, NMFS projects commercial in-season closures to occur during the month of November. The recreational sector has not experienced any recent fishing season closures as a result of reaching its ACL, and based on projected recreational landings compared to the revised ACL, NMFS does not expect the recreational ACL to be reached and expects that the recreational sector will remain open for the entire fishing year. More specifically, the length of 2019–2020 recreational fishing season is discussed later in this final rule.

Comments and Responses

NMFS received 21 comments during the public comment period on the proposed rule for Abbreviated Framework 2. The commenters included individuals as well as commercial and recreational fishers and commercial and recreational fishing organizations. The majority of comments supported the increase in the vermilion snapper ACLs, and comments both opposed and supported the reduction in the black sea bass ACLs. NMFS acknowledges the comments in favor of all or part of the actions in Abbreviated Framework 2 and the proposed rule, and agrees with them; they are not further addressed below. Comments opposing the reduction in black sea bass ACLs and other comments that were similar and specifically relate to the actions in Abbreviated Framework 2 and the proposed rule were grouped together and are summarized and responded to below.

Comment 1: The black sea bass ACLs should not be reduced as the population is abundant. Additionally, there are historical issues with the black sea bass stock assessment, and a full benchmark assessment that addresses the recent changes to MRIP should be completed prior to making any changes to black sea bass ACLs.

Response: NMFS disagrees that the black sea bass ACLs should not be reduced. The latest stock assessment for South Atlantic black sea bass (SEDAR 56) was completed in April 2018. The Council's SSC reviewed the assessment, stated that the assessment represented the best scientific information available, and provided the Council with overfishing limits and ABC recommendations for the stock that result in the need to reduce black sea bass harvest levels. Although NMFS determined that black sea bass is not currently overfished or undergoing overfishing, SEDAR 56 demonstrated a smaller stock biomass than previously calculated in the SEDAR 25 update (2013) assessment. The Magnuson-Stevens Act requires all FMPs to contain ACLs that prevent overfishing. The best scientific information available indicates the current ACLs for the black sea bass stock are at levels that pose a risk of overfishing; therefore, this final rule reduces the sector ACLs to levels that minimize that risk. The Council determined that setting the total ACL for black sea bass at the SSC's recommended ABC levels is expected to provide biological benefits to the black sea bass stock. While the reduced ACLs are consistent with the recommended ABC levels, they are not expected to immediately result in actual harvest limitations. However, the reduced ACLs may constrain future harvest and prevent overfishing if harvest levels increase in the future and closures of the fishing seasons become necessary.

The Council's SSC reviewed a revised version of SEDAR 56 that incorporated the changes to MRIP, but the SSC did not provide new catch level recommendations based on the revised assessment to the Council. NMFS has determined that Abbreviated Framework 2 and the ACLs included in this final rule are the best scientific information available. The black sea bass stock is tentatively scheduled to undergo a research track stock assessment in 2021. A research track stock assessment is similar to past benchmark assessments and would provide a comprehensive review of all available data and assessment methods, with the potential to create new assessment models. Specific benchmark assessments will no longer occur starting in 2020.

Comment 2: NMFS should implement other management measures in place of the proposed black sea bass ACL reductions, such as reduced recreational bag limits, adjusted minimum size limits, and/or a spawning season closure. These other measures may be more effective in managing black sea bass harvest than ACL reductions.

Response: While the management measures suggested during the proposed rule comment period could be effective at slowing or even reducing black sea bass harvest, they would not replace the need for the reductions in the black sea bass commercial and recreational ACLs. As explained in the response to *Comment # 1,* SEDAR 56 demonstrated a smaller stock biomass than previously calculated in the 2013 stock assessment, and the SSC recommended a lower ABC to the Council. The Magnuson-Stevens Act requires all FMPs to contain ACLs that prevent overfishing, and the best scientific information available indicates the current ACLs for the black sea bass stock are at levels that pose a risk of overfishing; therefore, this final rule reduces the sector ACLs to levels that minimize that risk. In Abbreviated Framework 2, the Council only considered actions to reduce the black sea bass ACLs to prevent overfishing of the stock in the South Atlantic. In the future, the Council could consider other measures, such as revisions to recreational bag limits, minimum size limits, and spawning season closures.

Comment 3: The proposed vermilion snapper ACLs should gradually increase over the next 5 years as opposed to immediately increasing the ACLs upon implementation of the final rule and then annually decreasing the ACLs until 2023.

Response: NMFS disagrees. The Council's SSC applied the Council's ABC control rule to the results of the latest vermilion snapper stock assessment (SEDAR 55). The vermilion snapper ACLs initially increase because the biomass of the stock is currently above levels that will produce the maximum sustainable yield (MSY). When the stock size is greater than the biomass that will produce MSY, it can be reduced to the MSY level. This is achieved by gradually reducing the ACLs over time, which will allow for fishing effort to reduce the stock biomass each year until the biomass level at MSY is reached in 2023.

Black Sea Bass Recreational Fishing Season Length for 2019–2020 Fishing Year

This final rule also serves to announce the South Atlantic recreational fishing season length for the 2019–2020 fishing year, based on the revised black sea bass recreational ACL implemented in this final rule.

The recreational fishing year for black sea bass is April 1 through March 31. Setting the length of recreational season for black sea bass is one of the AMs for the recreational sector, and was established in Regulatory Amendment 14 to the FMP (79 FR 66316, November 7, 2014). The season length AM for recreational black sea bass states that prior to the April 1 start of each recreational fishing year, NMFS projects the length of the upcoming recreational fishing season based on when NMFS projects the recreational ACL will be met and announces the recreational season end date in the **Federal Register** (50 CFR 622.193(e)(2)). The purpose of this AM is to have a more predictable recreational season length while still constraining harvest at or below the recreational ACL to protect the stock from experiencing adverse biological

consequences. This year, as a result of delays in this rulemaking related to the recent lapse in appropriations for NMFS, the announcement for the current fishing year, via publication of this final rule, was not able to occur prior to April 1, 2019.

NMFS estimates that recreational landings for the 2019–2020 fishing year will be less than current ACL and less than the 2019–2020 recreational ACL implemented in this final rule for Abbreviated Framework 2. This recreational landings estimate is not connected to the overall timing of this fishing season announcement. To make this determination, NMFS compared landings in the last 3 fishing years to the recreational ACL for the 2019–2020 black sea bass fishing year of 367,119 lb (166,522 kg), gutted weight, 433,200 lb (196,496 kg), round weight. Landings in each of the past 3 fishing years have been below the 2019–2020 recreational ACL. Therefore, NMFS projects the recreational landings in the 2019–2020 fishing year to be less than the 2019–2020 recreational ACL. Accordingly, the recreational sector for black sea bass is not expected to close as a result of reaching its ACL, and the season end date for recreational fishing for black sea bass in the South Atlantic EEZ south of 35°15.9′ N lat. is March 31, 2020, the end of the current fishing year.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

NMFS notes that Abbreviated Framework 2 considered only one alternative to increase the ACLs for vermilion snapper and one alternative to reduce the ACLs for black sea bass. These alternatives are based on the Council SSC's recommendations, in response to the latest stock assessments for each species, in order to achieve OY and prevent overfishing the stocks.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments from the public or SBA's Chief Counsel for Advocacy were received regarding the certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

As noted in the preamble, this final rule also serves to announce that for the 2019–2020 fishing year the recreational sector for South Atlantic black sea bass is not expected to close prior to March 31, 2020, as a result of the ACL reduction implemented through this final rule.

The action to announce the length of the black sea bass recreational fishing season responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement the notice of the recreational season length constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment is unnecessary. Such procedures are unnecessary, because the final rule to implement Regulatory Amendment 14 that established the AM to announce the length of the season (79 FR 66316, November 7, 2014) has already been subject to notice and comment, and all that remains is to notify the public of the recreational season length. Because there is good cause to waive prior notice and public comment on the determination of the length of the fishing season, a regulatory flexibility analysis is not required for this determination and none has been prepared. In addition, the absence of a recreational closure and the fact that recreational anglers and for-hire vessels (charter vessels and headboats) are not considered business entities for RFA purposes, this action has no economic impacts on small business entities.

Providing as much advance notice as possible to recreational black sea bass fishers provides the benefit of increased flexibility for additional time to conduct trip planning and booking of recreational trips. In addition, the black sea bass recreational fishing year begins annually on April 1, and as described in 50 CFR 622.193(e)(2), NMFS is required to announce the length of the recreational fishing season by that date. Waiving the 30-day delay in effectiveness for this measure will allow this notification to occur as close to April 1 as practicable. Additionally, the recreational season length announcement does not impose any requirements on recreational fishermen and no advance preparation is necessary. Therefore, for the aforementioned reasons, for the black sea bass recreational season length announcement specifically, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

List of Subjects in 50 CFR Part 622

Annual catch limits, Black sea bass, Fisheries, Fishing, South Atlantic, Quotas, Vermilion snapper.

Dated: April 2, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.190, revise paragraphs (a)(4)(i) and (ii) and (a)(5) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(4) * * *

(i) For the period January through June each year.

(A) For the 2019 fishing year—483,658 lb (219,384 kg), gutted weight; 536,860 lb (243,516 kg), round weight.

(B) For the 2020 fishing year—452,721 lb (205,351 kg), gutted weight; 502,520 lb (227,939 kg), round weight.

(C) For the 2021 fishing year—431,279 lb (195,625 kg), gutted weight; 478,720 lb (217,144 kg), round weight.

(D) For the 2022 fishing year—417,189 lb (189,234 kg), gutted weight; 463,080 lb (210,050 kg), round weight.

(E) For the 2023 and subsequent fishing years—409,225 lb (185,621 kg), gutted weight; 454,240 lb (206,040 kg), round weight.

(ii) For the period July through December each year.

(A) For the 2019 fishing year—483,658 lb (219,384 kg), gutted weight; 536,860 lb (243,516 kg), round weight.

(B) For the 2020 fishing year—452,721 lb (205,351 kg), gutted weight; 502,520 lb (227,939 kg), round weight.

(C) For the 2021 fishing year—431,279 lb (195,625 kg), gutted weight; 478,720 lb (217,144 kg), round weight.

(D) For the 2022 fishing year—417,189 lb (417,189 kg), gutted weight; 463,080 lb (210,050 kg), round weight.

(E) For the 2023 and subsequent fishing years—409,225 lb (185,621 kg), gutted weight; 454,240 lb (206,040 kg), round weight.

* * * * *

(5) *Black sea bass.* (i) For the 2019 fishing year—276,949 lb (125,622 kg), gutted weight; 326,800 lb (148,234 kg), round weight.

(ii) For the 2020 fishing year—243,788 lb (110,580 kg), gutted weight; 287,670 lb (130,485 kg), round weight.

(iii) For the 2021 fishing year and subsequent fishing years—234,314 lb (106,283 kg), gutted weight; 276,490 lb (125,414 kg), round weight.

* * * * *

■ 3. In § 622.193, revise the first sentence of paragraph (e)(2) and revise paragraph (f)(2)(iv) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) *Recreational sector.* The recreational ACL for black sea bass is 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2018–2019 fishing year; 367,119 lb (166,522 kg), gutted weight, 433,200 lb (196,496 kg), round weight for the 2019–2020 fishing year; 323,161 lb (146,583 kg), gutted weight, 381,330 lb (172,968 kg), round weight, for the 2020–2021 fishing year; and 310,602 lb (140,887 kg), gutted weight, 366,510 lb (166,246 kg), round weight, for the 2021–2022 and subsequent fishing years. * * *

* * * * *

(f) * * *

(2) * * *

(iv) The recreational ACL for vermilion snapper is 455,207 lb (206,478 kg), gutted weight, 505,280 lb (229,191 kg), round weight, for the 2019 fishing year; 426,090 lb (193,271 kg), gutted weight, 472,960 lb (214,531 kg), round weight, for the 2020 fishing year; 405,910 lb (184,118 kg), gutted weight, 450,560 lb (204,552 kg), round weight, for the 2021 fishing year; 392,649 lb (178,103 kg), gutted weight, 435,840 lb (197,694 kg), round weight, for the 2022 fishing year; and 385,520 lb (174,869 kg), gutted weight, 427,520 lb (193,920 kg), round weight, for the 2023 and subsequent fishing years.

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[FR Doc. 2019–06788 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 68
Tuesday, April 9, 2019

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Document Number AMS–SC–18–0023C]

Mango Promotion, Research and Information Order; Referendum on Inclusion of Frozen Mangos

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Notification of referendum order; modification.

SUMMARY: The Agricultural Marketing Service (AMS) is modifying a notification of referendum order published in the February 21, 2019 issue of the **Federal Register**. This document amends the dates of the voting period for the referendum. This document directs that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor the inclusion of frozen mangos as a covered commodity under the Mango Promotion, Research and Information Order (Order).

DATES: The voting period for the referendum published on February 21, 2019 (84 FR 5379) is modified, and will now be conducted from May 13, 2019 through June 3, 2019. The U.S. Department of Agriculture (Department) will provide the option for electronic ballots. Further details will be provided in the ballot instructions. First handlers who received 500,000 or more pounds of fresh mangos from producers and importers who imported 500,000 or more pounds of fresh mangos or 200,000 or more pounds of frozen mangos into the United States, during the representative period from January 1 through December 31, 2017, are eligible to vote. Mail ballots must be postmarked by June 3, 2019. Ballots delivered via express mail or email must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on June 3, 2019.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Promotion and Economics Division (PED), Specialty Crops Program (SCP), AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244; telephone: (202) 720–9915, (202) 720–5976 (direct line); facsimile: (202) 205–2800.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, PED, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244; telephone: (202) 720–9915, (202) 720–5976 (direct line); facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (1996 Act), it is hereby directed that a referendum be conducted to ascertain whether the inclusion of frozen mangos in the Order is favored by eligible first handlers of fresh mangos and importers of fresh and frozen mangos covered under the program. Recently, the Order was modified to add frozen mangos as a covered commodity, and importers of frozen mangos will be assessed one cent ($0.01) per pound on frozen mangos. In addition, the National Mango Board membership has been expanded from 18 to 21 with the addition of two seats for importers of frozen mangos and one seat for a foreign processor. As these changes to the Order involve new covered entities, the Department determines that it is appropriate to conduct a referendum on the provisions regarding frozen mangos to ensure that those covered under the program agree with continuation of the Order as modified.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2017. First handlers who received 500,000 or more pounds of fresh mangos from producers and importers who imported 500,000 or more pounds of fresh mangos or 200,000 or more pounds of frozen mangos into the United States during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from May 13, through June 3, 2019. The Department will provide the option for electronic ballots. Further details will be provided in the ballot instructions.

Section 518(d) of the Act authorizes referenda at any time to determine whether the continuation, suspension, or termination of the order or a provision of the order is favored by persons eligible to vote. The Department would retain the provisions of the Order that added frozen mangos to the program and increased the size of the Board if approved by a majority of the first handlers and importers voting in the referendum. If not approved, the Department will conduct rulemaking to remove the provisions from the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. 2017 assessment data from the Board reflects approximately five first handlers and 275 importers of fresh mangos, of which approximately 100 imported over 500,000 pounds or more into the United States. 2017 Customs data indicated there were an estimated 190 importers of frozen mangos, of which approximately 60 imported over 200,000 pounds or more into the United States.[1] It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Jeanette Palmer, Marketing Specialist and Heather Pichelman, Director, Promotion and Economics Division, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1206.100 through 1206.108, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will distribute the ballots to be cast in the referendum and voting instructions to all known first handlers who received 500,000 or more pounds of fresh mangos from producers and importers who imported 500,000 or more pounds of fresh mangos or 200,000 or more of frozen mangos into the United States during the representative period. Persons who received an exemption from

[1] *https://www.cbp.gov/trade/automated.*

assessments during the entire representative period are ineligible to vote. Any eligible first handler or importer who does not receive a ballot should contact a referendum agent no later than one week before the end of the voting period. Mail ballots must be postmarked by June 3, 2019. Ballots delivered via express mail or email must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on June 3, 2019.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

Dated: April 4, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–06963 Filed 4–8–19; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0008]

Energy Conservation Program: Energy Conservation Standards for Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for small electric motors. Under the Energy Policy and Conservation Act of 1975, as amended (''EPCA''), DOE must review these standards at least once every six years and publish either a notice of proposed rulemaking (''NOPR'') to propose new standards for small electric motors or a notice of determination that the existing standards do not need to be amended. This request for information (''RFI'') solicits information from the public to help DOE determine whether amending the standards for small electric motors would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before May 24, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: SmallElecMotors2019STD0008@ee.doe.gov*. Include the docket number EERE–2019–BT–STD–0008 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov*. All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0008*. The docket web page will contain instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

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I. Introduction

A. Authority and Background

The Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or ''the Act''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317). Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small electric motors, the subject of this RFI. (See generally 42 U.S.C. 6311(13)(G) and 42 U.S.C. 6317(b))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). EPCA includes specific authority to establish test procedures and standards for small electric motors. (42 U.S.C. 6317(b))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (See 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297(a)–(c)).

EPCA defines ''small electric motor'' as ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' (42 U.S.C. 6311(13)(G)) EPCA directed DOE to establish a test procedure for those small electric motors for which DOE makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(b)(1)) EPCA further directed DOE to prescribe energy conservation standards for those small electric motors for which test procedures were established. (42 U.S.C. 6317(b)(2)) Additionally, EPCA prescribed that any such standards shall not apply to any small electric motor which is a component of a covered product or covered equipment under EPCA. (42 U.S.C. 6317(b)(3))

On July 10, 2006, DOE published its determination that energy conservation standards for certain single-phase, capacitor-start, induction-run, small electric motors are technologically feasible and economically justified, and would result in significant energy savings. 71 FR 38799. DOE completed the first rulemaking cycle in 2010 by publishing a final rule (the ''2010 standards Final Rule''), which established energy conservation standards for small electric motors manufactured starting on March 9, 2015.[3] 75 FR 10874 (March 9, 2010). The current energy conservation standards are located in title 10 of the Code of Federal Regulations (''CFR'') part 431, section 446. The currently applicable DOE test procedures for small electric motors appear at 10 CFR 431.444.

EPCA requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered equipment, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)). DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(2)) In making a determination that the standards do not need to be amended, DOE must evaluate whether amended standards (1) will result in significant conservation of energy, (2) are technologically feasible, and (3) are cost effective as described under 42 U.S.C. 6295(o)(2)(B)(i)(II). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A)) (Under 42 U.S.C. 6295(o)(2)(B)(i)(II), DOE must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard. See 42 U.S.C. 6295(m)(1)(A), 6295(n)(2), and 6295(o)(2)(B)(i)(II).) In determining whether to propose new standards, DOE must evaluate that proposal against the criteria of 42 U.S.C. 6295(o) and follow the rulemaking procedures set out in 42 U.S.C. 6295(p).

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment. EPCA requires that a new or amended energy conservation standard prescribed by the Secretary be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)). To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected equipment;

(2) The savings in operating costs throughout the estimated average life of the equipment compared to any increases in the initial cost, or maintenance expense;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the equipment likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I–1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

[1] All references to EPCA in this document refer to the statute as amended through the America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] In a technical correction, DOE revised the compliance date for energy conservation standards to March 9, 2015, for each small electric motor manufactured (alone or as a component of another piece of non-covered equipment), or March 9, 2017, in the case of a small electric motor which requires listing or certification by a nationally recognized safety testing laboratory. 75 FR 17036 (April 5, 2010).

TABLE I–1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analyses
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for small electric motors.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether to amend its standards for small electric motors. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (February 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to small electric motors while remaining consistent with the requirements of EPCA.

A. Equipment Covered by This Request for Information

This RFI covers equipment that meet the definition of small electric motor, as codified in 10 CFR 431.442. The definition for small electric motor was most recently amended in a test procedure final rule. 74 FR 32059 (July 7, 2009).

1. Definition of ''Small Electric Motor''

Section 340(13)(G) of EPCA, as amended by the Energy Independence and Security Act of 2007 (''EISA 2007''), defines ''small electric motor'' as ''a NEMA general purpose alternating-current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' (42 U.S.C. 6311(13)(G)). As part of that definition, DOE clarified that it includes ''IEC metric equivalent motors.'' 10 CFR 431.442. DOE currently regulates the energy efficiency of those small electric motors that fall within three topologies: Capacitor-start induction-run (''CSIR''), capacitor-start capacitor-run (''CSCR''), and certain polyphase motors. See 10 CFR 431.446.

Issue A.1. DOE requests comment on whether the definition for the types of motors that comprise small electric motors. In particular, DOE requests feedback on whether definitions of ''capacitor-start induction-run,'' ''capacitor-start capacitor-run,'' and ''polyphase'' within the context of the small electric motor definition are needed—or whether cross-references to particular industry-based standards would suffice. DOE also requests input on whether revisions to any of the other definitions found—or otherwise related to—the small electric motor regulations at subpart X of 10 CFR part 431 are needed.

2. Small Electric Motors Currently Subject to Standards

Subpart X of 10 CFR part 431 includes energy conservation standards and test procedures for the small electric motors listed in Table II–1. DOE is currently not considering any changes to the scope of applicability of energy conservation standards for small electric motors.

TABLE II–1—SMALL ELECTRIC MOTORS CURRENTLY SUBJECT TO ENERGY CONSERVATION STANDARDS

Motor topology	Pole configuration	Motor output power
Single-phase:		
CSIR	2, 4, 6	0.25–3 hp (0.18–2.2 kW).*
CSCR	2, 4, 6	0.25–3 hp (0.18–2.2 kW).

TABLE II–1—SMALL ELECTRIC MOTORS CURRENTLY SUBJECT TO ENERGY CONSERVATION STANDARDS—Continued

Motor topology	Pole configuration	Motor output power
Polyphase	2, 4, 6	0.25–3 hp (0.18–2.2 kW).

Certain motor categories are not currently subject to standards. These include:
- Polyphase, 6-pole, 2 and 3 hp motors;
- CSCR and CSIR, 6-pole, 1.5, 2, and 3 hp motors;
- CSCR and CSIR, 4-pole, 3 hp motors.

* The values in parentheses are the equivalent metric ratings.

B. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new and/or amended energy conservation standard provides information about the relevant industry that will be used in DOE's analysis. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of small electric motors. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies for small electric motors.

1. Equipment Classes

When evaluating and establishing energy conservation standards, DOE may divide covered equipment into equipment classes by the type of energy used, by capacity, or other performance-related feature. (42 U.S.C. 6316(a); 41 U.S.C. 6295(q)). In making a determination whether capacity or another performance-related feature would justify a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

For small electric motors, DOE currently specifies standards in 10 CFR 431.446 for 62 equipment classes [4] that are delineated by motor topology (polyphase, CSIR, or CSCR), pole configuration (2, 4, or 6 poles), and rated motor horsepower/standard kilowatt equivalent (0.25 to 3 horsepower or 0.18 to 2.2 kilowatts). 75 FR 10874, 10886–10887. Chapter 3 of the 2010 Final Rule technical support document (''TSD'') provides additional details on the establishment of the 62 equipment classes.[5] Tables II–3, II–4, and II–5 that follow enumerate each equipment class (''EC'') found in the DOE standards.

TABLE II–2—EQUIPMENT CLASSES FOR POLYPHASE SMALL ELECTRIC MOTORS WITH OPEN CONSTRUCTION

Motor horsepower/standard kilowatt equivalent	Six poles	Four poles	Two poles
0.25/0.18	EC #1	EC #2	EC #3
0.33/0.25	EC #4	EC #5	EC #6
0.50/0.37	EC #7	EC #8	EC #9
0.75/0.55	EC #10	EC #11	EC #12
1/0.75	EC #13	EC #14	EC #15
1.5/1.1	EC #16	EC #17	EC #18
2/1.5		EC #19	EC #20
3/2.2		EC #21	EC #22

TABLE II–3—EQUIPMENT CLASSES FOR CAPACITOR-START INDUCTION-RUN SMALL ELECTRIC MOTORS WITH OPEN CONSTRUCTION

Motor horsepower/standard kilowatt equivalent	Six poles	Four poles	Two poles
0.25/0.18	EC #23	EC #24	EC #25
0.33/0.25	EC #26	EC #27	EC #28
0.5/0.37	EC #29	EC #30	EC #31
0.75/0.55	EC #32	EC #33	EC #34
1/0.75	EC #35	EC #36	EC #37
1.5/1.1		EC #38	EC #39
2/1.5		EC #40	EC #41
3/2.2			EC #42

TABLE II–4—EQUIPMENT CLASSES FOR CAPACITOR-START CAPACITOR-RUN SMALL ELECTRIC MOTORS WITH OPEN CONSTRUCTION

Motor horsepower/standard kilowatt equivalent	Six poles	Four poles	Two poles
0.25/0.18	EC #43	EC #44	EC #45
0.33/0.25	EC #46	EC #47	EC #48

[4] The term ''equipment classes'' is used here to refer to the classes identified as ''Product Classes'' in the 2010 standards final rule.

[5] See Small Electric Motors Final Rule TSD chapter 3 at: *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

TABLE II–4—EQUIPMENT CLASSES FOR CAPACITOR-START CAPACITOR-RUN SMALL ELECTRIC MOTORS WITH OPEN CONSTRUCTION—Continued

Motor horsepower/standard kilowatt equivalent	Six poles	Four poles	Two poles
0.5/0.37	EC #49	EC #50	EC #51
0.75/0.55	EC #52	EC #53	EC #54
1/0.75	EC #55	EC #56	EC #57
1.5/1.1		EC #58	EC #59
2/1.5		EC #60	EC #61
3/2.2			EC #62

For the 2010 standards Final Rule, DOE considered CSIR and CSCR motors to be distinct equipment classes because of efficiency and physical size differences due to the presence of a run capacitor. The run capacitor of a CSCR motor is often mounted in an external housing, and therefore; DOE was concerned that CSCR motors may have limited utility in space constrained applications compared to CSIR motors which do not have a run capacitor. However, DOE ultimately established the same energy conservation standards for both CSIR and CSCR motors. Based on a recent review of major motor manufacturer catalogs, DOE has found no CSIR motors for sale that meet or exceed the current energy conservation standards. The physical size or type of start and run capacitors used on CSCR motors may have changed since the 2010 standards Final Rule, possibly permitting the use of a CSCR motor in space-constrained applications. In light of the possibility that CSIR motors may no longer be offered for sale and CSCR motor have been able to effectively take the place of CSIR motors in space-constrained applications, DOE may consider combining these classes into a single equipment class because they are typically advertised to serve the same applications and they provide similar features (*e.g.,* high locked-rotor torque).

Issue B.1. DOE requests feedback on the current small electric motor equipment classes and whether changes to these individual equipment classes and their descriptions should be made, or whether certain classes should be merged (*e.g.,* CSCR and CSIR equipment classes) or separated. Has the physical size or type of start and run capacitors changed since the 2010 standards Final Rule, (*e.g.,* a shift from paper and foil capacitors to smaller metallized film capacitors)? DOE further requests feedback on whether combining certain classes could impact equipment utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for this equipment. DOE also requests comment on separating any of the existing equipment classes and whether it would impact equipment utility by eliminating any performance-related features or reduce any compliance burdens. DOE requests information on the potential manufacturer burden associated with either merging or separating such classes.

Issue B.2. DOE seeks information regarding any other new equipment classes meeting the small electric motor definition that it should consider for inclusion in its analysis. Specifically, DOE requests information on the performance-related features (*e.g.,* input power supply, operating speed, *etc.*) that provide unique consumer utility and data detailing the corresponding impacts on energy use that would justify separate equipment classes (*i.e.,* explanation for why the presence of these performance-related features would increase energy consumption).

2. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will likely include a number of the technology options DOE previously considered during its previous rulemaking for small electric motors. A complete list of those prior options appears in Table II–5. See also, 75 FR 10874, 10887.[6]

TABLE II–5—TECHNOLOGY OPTIONS TO INCREASE SMALL ELECTRIC MOTOR EFFICIENCY

Category of loss to reduce	Technology option applied
I^2R Losses (Resistive losses, stemming from current flow)	Use copper die-cast rotor cage. Remove skew on conductor cage. Increase cross-sectional area of rotor conductor bars. Increase end ring size. Changing gauges of copper wire in stator. Manipulate stator slot size. Decrease the radial air gap. Change run-capacitor rating.
Core Losses (Losses created in the steel components of a motor from hysteresis losses and eddy currents.).	Improve grade of electrical steel. Use thinner steel laminations. Anneal steel laminations. Add stack height (*i.e.,* length, add electrical steel laminations). Use high-efficiency lamination materials. Use plastic bonded iron powder.

[6] For a description of how each of these technology options would improve small electric motor efficiency, see Small Electric Motors Final Rule TSD chapter 3 and chapter 4 at *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

TABLE II–5—TECHNOLOGY OPTIONS TO INCREASE SMALL ELECTRIC MOTOR EFFICIENCY—Continued

Category of loss to reduce	Technology option applied
Friction and Windage Losses (Losses from bearing friction and an imperfect cooling fan system).	Use better bearings and lubricant. Install a more efficient cooling system.

DOE is not aware of specific techniques manufacturers use to reduce stray-load losses, which are any losses that are not attributed to I^2R losses, core losses, or friction and windage losses and otherwise unaccounted for. DOE notes that general process changes to the manufacturing of rotors and stators could potentially reduce such losses.

Issue B.3. DOE seeks information on the technologies listed in Table II–5 regarding their applicability to the current market and how these technologies may impact the efficiency of small electric motors as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the 2010 standards Final Rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option. DOE also seeks information regarding the cost-effectiveness associated with introducing each of the listed options in achieving improved energy efficiency for small electric motors—*e.g.,* what are the expenses of implementing each of the listed options compared to the energy and related cost savings potential that each of these options would be likely to bring to the end user.

Issue B.4. DOE seeks comment on other technology options that it should consider for inclusion in its analysis and whether these technologies may impact equipment features or consumer utility. DOE also seeks input regarding the cost-effectiveness of implementing these options.

C. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or equipment availability.* If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Options that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the four criteria are eliminated from consideration.

Table II.6 summarizes the technology options that DOE screened out in the 2010 standards Final Rule, and the applicable screening criteria.

TABLE II.6—PREVIOUSLY SCREENED OUT TECHNOLOGY OPTIONS FROM THE 2010 STANDARDS FINAL RULE

Screened technology option	EPCA criteria (X = basis for screening out)			
	Technological feasibility	Practicability to manufacture, install, and service	Adverse impact on product utility	Adverse impacts on health and safety
Plastic Bonded Iron Powder	X			
Radial Air Gap <0.0125 inches		X		

Issue C.1. DOE requests feedback on what impact, if any, the four screening criteria described in this section would have on each of the technology options listed in Table II–5 with respect to small electric motors. Similarly, DOE seeks information regarding how these same criteria would affect any other technology options not already identified in this document with respect to their potential use in small electric motors.

Issue C.2. With respect to the screened out technology options listed in Table II.6, DOE seeks information on whether these options would remain screened out under the four screening criteria described in this section, and if so, DOE requests any current or projected assessment regarding each technology option that would support further consideration of that option in DOE's analysis. With respect to each of these technology options, what steps, if any, could be (or have already been) taken to facilitate the introduction of each option as a means to improve the energy efficiency performance of small

electric motors and the potential to impact the utility of the small electric motor to end-users? DOE in particular seeks information on the potential impact of these technologies on the utility of the small electric motor to end-users and the impact to the use of the small electric motor in the larger equipment.

D. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency (''efficiency levels''). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production cost (''MPC'') associated with increasing the efficiency of equipment above the baseline efficiency level, up to the maximum technologically feasible (''max-tech'') efficiency level for each equipment class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (''ELs'') for analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed cost data for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Baseline Efficiency Levels

For each established equipment class, DOE selects a baseline model as a reference point against which any changes resulting from energy conservation standards under consideration can be measured. The baseline model in each equipment class represents the characteristics of common or typical equipment in that class. Typically, a baseline model is one that meets the current minimum energy conservation standards and provides basic consumer utility.

Consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservation standards for small electric motors (which were required for compliance starting on March 9, 2015 and, for small electric motors requiring listing or certification by a nationally recognized safety testing laboratory, on March 9, 2017) to establish the baseline efficiency levels for each equipment class. The current standards for each equipment class are based on average full load efficiency. The current standards for small electric motors are found in 10 CFR 431.446.

Issue D.1. DOE requests feedback on whether using the current energy conservation standards for small electric motors are appropriate baseline efficiency levels for DOE to apply to each equipment class in evaluating whether to amend the current energy conservation standards for this equipment. DOE requests data and suggestions on how to evaluate the baseline efficiency levels to better evaluate whether the current energy conservation standards for this equipment merit further amending.

Issue D.2. DOE requests feedback on whether CSIR motors subject to the small electric motor standards are currently for sale and whether DOE should analyze a CSIR baseline if it decides to consider amending or otherwise revising the standards for small electric motors.

Issue D.3. DOE requests feedback on the appropriate baseline efficiency levels for any newly analyzed equipment classes that are not currently in place or for the contemplated combined equipment classes, as discussed in section II.B.1 of this document. For those combined equipment classes DOE is considering for its analysis, as well as for any additional equipment classes suggested for further examination, DOE requests energy use data regarding each of these classes to develop a baseline relationship between efficiency and rated output power and number of poles.

2. Maximum Available and Maximum Technologically Feasible Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. For the 2010 standards Final Rule, DOE did not analyze all 62 small electric motor equipment classes. Rather, DOE focused on three equipment classes and applied the analysis of those classes to the remaining equipment classes. These representative equipment classes generally represented the most common (by shipments) pole configuration and horsepower ratings (*i.e.,* 1-horsepower, four-pole, polyphase motors; ½-horsepower, four-pole, CSIR motors; and ¾-horsepower, four-pole, CSCR motors). See 75 FR 10874, 10888 and chapter 5 of the final rule TSD for that rulemaking.[7] DOE identified the maximum available efficiencies listed in motor manufacturer product catalogs for three representative equipment classes, listed in Table II–7.

TABLE II–7—MAXIMUM EFFICIENCY LEVELS CURRENTLY AVAILABLE

Representative equipment class	Maximum available motor efficiency (%)	Current energy conservation standard (%)
1-horsepower, four-pole, polyphase motors	85.5	83.5
¾-horsepower, four-pole, CSCR motors	81.8	81.8
½-horsepower, four-pole, CSIR motors	* N/A	81.8

* Based on review of motor catalogs, no CSIR motors meeting or exceeding current energy conservation standards.

[7] See Small Electric Motors Final Rule TSD chapter 5 at: *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

DOE defines a max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a motor model. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible. In the 2010 standards final rule, DOE determined max-tech efficiency levels using motor design modeling with the most efficient design parameters that were technologically feasible. These motor models were based on the use of all design options applicable to the specific equipment classes.

Issue D.4. DOE seeks input on whether the maximum available efficiency levels are appropriate and technologically feasible for potential consideration as possible energy conservation standards for the equipment at issue—and if not, why not. DOE also requests feedback on whether the maximum available efficiencies presented in Table II–7 are representative of those for the small electric motor equipment classes that are currently regulated but were not directly analyzed in the 2010 standards Final Rule. To the extent that the range of possible efficiencies differs from the efficiencies of the other equipment classes that were not directly analyzed, what alternative approaches should DOE consider using to represent the efficiency of those equipment classes and why?

Issue D.5. DOE seeks feedback on what design options would likely be incorporated at a max-tech and maximum-available efficiency level, and on the efficiency values associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

3. Manufacturer Production Costs and Manufacturer Selling Price

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency equipment for the analyzed equipment classes. For the 2010 standards final rule, DOE developed the cost-efficiency relationships by using a reverse-engineering process where cost models were developed based on the results of a tear down process for representative units.

In the 2010 standards final rule, DOE analyzed both space-constrained and non-space-constrained representative units for some efficiency levels. The space-constrained representative unit uses higher-grade materials to maintain motor stack length within 20 percent of the baseline design, while the non-space-constrained representative unit increases motor size (increased stack length up to 100 percent, same frame size) while using lower-grade materials. The non-space-constrained representative unit is larger, but less expensive to produce. The space-constrained representative unit is more expensive to produce and would only be selected by customers with applications that cannot accept a larger motor.

Issue D.6. DOE requests feedback on how manufacturers would incorporate the technology options listed in Table II–5 and not screened out in Table II.6 to increase energy efficiency in small electric motors beyond the baseline. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of motors. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand, as well as a manufacturer's ability to satisfy the demand for small electric motors used in current applications.

Issue D.7. DOE also seeks input on the increase in MPC associated with incorporating each particular design option. Specifically, DOE is interested in whether and how the costs estimated for design options in the 2010 standards Final Rule have changed since the time of that analysis. DOE also requests information on the investments (including related costs) necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

Issue D.8. DOE requests comment on whether certain design options may not apply to (or be incompatible with) specific equipment classes.

Issue D.9. DOE requests comment on whether space-constrained applications exist that cannot accept a change in motor size, the market share of these applications, and how that market share varies by equipment class.

As described in section II.D.2 of this document, DOE analyzed three equipment classes in the 2010 standards Final Rule. DOE developed cost-efficiency curves for each of these equipment classes that were used as the input for the downstream analyses conducted in support of that rulemaking. See chapter 5 of the 2010 standards Final Rule TSD for the cost-efficiency curves developed in that rulemaking.[8]

Issue D.10. DOE seeks feedback on whether the approach of analyzing a sub-set of equipment classes is appropriate for evaluating the feasibility of potential energy conservation standards for small electric motors. DOE requests comment on whether it is necessary to individually analyze all three representative equipment classes analyzed in the 2010 standards Final Rule—and if so, why. If analyzing a sub-set of small electric motor classes is sufficient, what minimum number of classes should DOE analyze—and how should those classes be distributed among the 62 separate classes that DOE currently regulates. Additionally, DOE seeks comment on whether DOE's prior approach of analyzing particular equipment classes and applying those results to the remaining classes remains appropriate in principle—and if not, why not? For example, if it is necessary to individually analyze more than the three equipment classes used in the 2010 standards Final Rule, please provide information on why aggregating certain equipment is not appropriate. If this approach is not appropriate, what alternative approaches should DOE consider using as an alternative and why?

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. For the 2010 standards final rule, DOE used three manufacturer markups to account for costs that are part of each motor leaving a manufacturer's facility:

- *Handling and scrap factor:* 2.5 percent markup. This markup was applied to the direct material production costs of each motor. It accounts for the handling of material and the scrap material that cannot be used in the production of a finished small electric motor.
- *Factory overhead:* 17.5 or 18.0 percent markup. DOE applied factory overhead to the direct material production costs, including the

[8] See Small Electric Motors Final Rule TSD chapter 5 at: *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

handling and scrap factor, and labor estimates. For aluminum rotor designs a 17.5 percent markup was used, but for all copper rotor designs an 18.0 percent markup was used to factor in increased depreciation for the equipment.

• *Non-production:* 45 percent markup. This markup reflects costs including sales and general administrative, research and development, interest payments, and profit factor. DOE applied the non-production markup to the sum of the direct material production, the handling and scrap, the direct labor, and the factory overhead otherwise known as the MPC.

DOE prepared these estimated markups based on corporate reports and conversations with manufacturers and experts. See chapter 5 of the 2010 standards final rule TSD [9] for further detail.

Issue D.11. DOE requests feedback on whether the manufacturer markups used in the 2010 standards final rule would be appropriate for use in a potential small electric motors standards rulemaking. If the markups require revision, what specific revisions are needed for each? Are there additional markups that DOE should also consider—if so, which ones and why?

E. Distribution Channels

In generating end-user price inputs for the life-cycle cost (''LCC'') analysis and national impact analysis (''NIA''), DOE must identify distribution channels (*i.e.,* how the small electric motors are distributed from the manufacturer to the consumer), and estimate relative sales volumes through each channel. In the 2010 standards final rule, DOE accounted for three distribution channels for small electric motors and estimated their respective shares of sales volume: (1) From manufacturers to original equipment manufacturers (''OEMs''), who incorporate motors in larger pieces of equipment, to OEM equipment distributors, to contractors, and then to end-users (65 percent of shipments); (2) from manufacturers to wholesale distributors, to OEMs, to OEM equipment distributors, to contractors, and then to end-users (30 percent of shipments); and (3) from manufacturers to distributors or retailers, to contractors and then to end-users (5 percent of shipments). In that rulemaking, DOE recognized that contractors are not used in all installations, because some firms have in-house technicians who would install equipment or replace a motor. However, at the time, DOE had no information on the extent to which this occurs, so it assumed that all channels also included a contractor.[10] Should sufficient information become available, DOE may consider including separate distribution channels that do not include contractors in addition to the existing distribution channels previously described.

Issue E.1. DOE requests information on the existence of any distribution channels other than the three channels that were identified in the 2010 standards final rule and as described in section II.E. DOE also requests data on the fraction of small electric motor sales that go through these channels, as well as the fraction of sales that go through any other identified channels.

F. Energy Use Analysis

As part of the rulemaking process, DOE conducts an energy use analysis to identify how motors are used by consumers to help determine the energy savings potential of energy efficiency improvements. DOE bases the energy consumption of small electric motors on the rated average full-load efficiency as determined by the DOE test procedure and on additional information to represent typical energy consumption in the field, such as: Annual operating hours, motor operating load, and part-load efficiency.

In the 2010 standards final rule, DOE determined the annual energy consumption of small electric motors by multiplying the power consumed while in operation by the annual hours of operation in various applications. The power consumed in operation was established as a function of the motor load and of the typical part-load efficiency of small electric motors as characterized in the engineering analysis.[11] DOE used shipments data to establish the share of each motor application and derived distributions of operating hours and load using data referenced in Nadel et al.[12] As part of a potential energy conservation standards rulemaking, DOE would review available motor energy use information and update these inputs as appropriate.

Issue F.1. DOE seeks input on data sources that DOE can use to characterize the variability in annual energy consumption for small electric motors. Specifically, DOE is requesting data and information related to: (1) The distribution of shipments across applications and sectors by equipment class or by motor topology and horsepower; (2) typical operating hours by application and sector; (3) typical motor load by application and sector; and (4) typical load profiles (*i.e.,* percentage of annual operating hours spent at specified load points) by application and sector.

G. Life-Cycle Cost and Payback Period Analysis

The purpose of the LCC and payback period (''PBP'') analysis is to analyze the effects of potential new and/or amended energy conservation standards on end users by determining how potential new and/or amended standards would affect their operating expenses (usually decreased) and their total installed costs (usually increased). DOE intends to characterize the variability and uncertainty of the inputs to the LCC and PBP calculations by using statistical distributions where appropriate, and by using Monte Carlo simulations. The analysis results are a distribution of thousands of data points showing the range of LCC savings and PBPs for a given standards case relative to a no new-standards case. In this section, DOE discusses specific inputs to the LCC and PBP analysis for which it requests comment and feedback.

1. Lifetimes

The equipment lifetime is the age at which the equipment is retired from service. In the 2010 standards Final Rule, DOE developed motor lifetime distributions with a mean of seven years for capacitor-start motors and a mean of nine years for polyphase motors. 75 FR 10874, 10901. Each distribution incorporates a correlation between the motor's annual hours of operation and the motor's mechanical lifetime. DOE estimated motor mechanical lifetimes of 40,000 hours for polyphase motors and 30,000 hours for single phase motors. In the 2010 standards Final Rule, motor lifetime is governed by two Weibull distributions.[13] One characterizes the motor lifetime in total operating hours (*i.e.,* mechanical lifetime), while the other characterizes the lifetime in years

[9] See Small Electric Motors Final Rule TSD chapter 5 at: *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

[10] See Technical Support Document, Chapter 7, Markups for Equipment Price Determination at *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

[11] See Technical Support Document, Chapter 6, Energy Use Characterization at *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

[12] Nadel, S.; Elliott, R.N.; Shepard, M.; Greenberg, S.; Katz, G.; Almeida, A. de, Energy-efficient motor systems: A handbook on technology, programs, and policy opportunities, 2nd edition. 2000. American Council for an Energy-Efficient Economy, Washington, DC (U.S.).

[13] The Weibull distribution is one of the more commonly used distributions in reliability. It is commonly used to model time to failure, time to repair and material strength.

of use in the application. Motors are retired from service at the age when they reach either of these limits. As part of a potential energy conservation standards rulemaking, DOE may consider using a similar approach to characterize motor lifetimes.

Issue G.1. DOE seeks data and input on the appropriate equipment lifetimes for small electric motors both in years and in lifetime mechanical hours that DOE should apply in its analysis.

2. Installation Costs

In the 2010 standards Final Rule, DOE assumed that more efficient motors will incur no increased installation costs. Should sufficient information become available, DOE may consider including different installation costs by efficiency levels as appropriate.

Issue G.2. DOE requests feedback and data on whether installation costs differ in comparison to the baseline installation costs for any of the specific technology options listed in Table II–5. In other words, how would the installation costs change (increase, decrease, or no change) if a manufacturer were to incorporate any of the options in Table II–6 when compared to the installation costs of a baseline small electric motor. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

3. Repair and Maintenance Costs

In the 2010 standards Final Rule, DOE found no evidence that repair or maintenance costs would increase with higher motor energy efficiency. 75 FR 10874, 10900. As part of the current evaluation, DOE reviewed motor repair cost data for small electric motors.[14] Based on this information, DOE found that motors rated at 5 hp or less are typically not repaired—they are replaced. Should DOE determine to undertake an energy conservation standards rulemaking, DOE would further review available motor repair and maintenance cost information and may consider including repair costs in the LCC calculation?

Issue G.3. DOE requests feedback and data on whether repair and maintenance costs differ in comparison to the baseline maintenance costs for any of the specific technology options listed in Table II–5. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

Issue G.4. DOE requests information and data on the repair frequency and repair costs by equipment class for the technology options listed in Table II–5. While DOE is interested in information regarding each of the listed technology options. DOE is also interested in the frequency of repairs made (as well as the types) and whether end users of this equipment replace or repair the small electric motor once it fails.

H. Shipments

DOE develops forecasts of equipment shipments to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by *e.g.,* equipment class, capacity, and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

Issue H.1. DOE requests 2010–2018 (or the most recently available) annual sales data (*i.e.,* number of shipments) for small electric motors by equipment class. If disaggregated data of annual sales are not available at the equipment class level, DOE requests more aggregated data of annual sales at the motor topology level.

Issue H.2. DOE requests 2010–2018 (or the most recently available) data on the fraction of sales in the residential, commercial, and industrial sector for small electric motors.

For the 2010 standards Final Rule, DOE developed a no-new-standards case shipments model for small electric motors driven by projected macroeconomic activity of the sectors in which they are used.[15] Annual shipments growth rates for each sector were set as equal to annual growth rates in the following drivers: (1) For industrial and agricultural sectors, manufacturing activity (in value of total shipments, in dollars); (2) for commercial sector, commercial floor space; and (3) for residential sector, number of households. DOE may consider using a similar approach if it undertakes an energy conservation standards rulemaking.

Issue H.3. DOE requests information on the rate at which annual sales (*i.e.,* number of shipments) of small electric motors is expected to change in the next 5 years. If possible, DOE requests this information by motor topology.

Issue H.4. DOE requests data and information on any trends in the motor market that could be used to forecast expected trends in market share by efficiency levels for each equipment class. If disaggregated data are not available at the equipment class level, DOE requests aggregated data at the motor topology level.

For the standards-case shipments projections, in the 2010 standards final rule, DOE assumed some consumers may shift to purchasing enclosed motors (not included in the scope of small electric motors) and used an elasticity of demand of -0.25 for both polyphase and single phase small electric motors to reflect this potential market shift. In addition, for CSIR and CSCR motors, DOE built a combined shipments model, reflecting the fact that these motors may be used interchangeably in many applications. In the 2010 standards final rule, DOE determined that CSCR motors were, on average, more expensive than CSIR motors for most equipment classes, physically larger due to the space required by a second capacitor, had lower losses, and had a relatively small overall market share. In the no-new-standards case, DOE used a 5 percent market share for CSCR motors and a 95 percent market share for CSIR motors. 75 FR 10874, 10903. However, DOE projected that, if a combination of standards were to be adopted which significantly changed the relative prices of CSCR and CSIR motors, this could result in significant changes in the respective market shares of these motors. DOE developed a model to analyze this potential market shift based on incremental purchase cost, incremental operating losses, and the observed market share in the current market. In the selected standards case in 2016, DOE projected a 93 percent market share for CSCR motors and a 7 percent market share for CSIR motors, assuming all shipments performed at the standard level. As mentioned in section II.B.1, based on a recent review of major motor manufacturer catalogs, DOE found no CSIR motors for sale that meet or exceed current energy conservation standards. Should DOE determine to undertake an energy conservation standards rulemaking, DOE would review available small electric motor shipment information and revise the shares of CSIR and CSCR motors to reflect the actual market?

For a potential energy conservation standards rulemaking, DOE may consider using a similar model with updated market share data to project market shares of small electric motors in the standards-case scenario.

Issue H.5. DOE requests data and information on the extent to which the shift from CSIR motors has been to CSCR motors.

[14] Vaughen's (2013), Vaughen's Motor & Pump Repair Price Guide, 2013 Edition. Available at *www.vaughens.com.*

[15] See Technical Support Document, Chapter 9, Shipments Analysis at *www.regulations.gov/document?D=EERE-2007-BT-STD-0007-0053.*

Issue H.6. DOE requests comment on the elasticity value of -0.25 used to characterize how consumers may respond to standards by changing to enclosed motors in the 2010 standards final rule.

Issue H.7. DOE requests data and information on what actions might be likely to have the greatest impact on the motor market if the agency were to amend or otherwise revise the energy conservation standards that are currently in place for small electric motors. For example, are there risks regarding potential market impacts stemming from more stringent—or the broader application of—energy conservation standards for this equipment. If so, what are these potential risks and why are they likely? With respect to these risks, what steps can DOE take to mitigate them while retaining the potential benefits of improved energy savings expected to accrue from amending or otherwise revising the energy conservation standards for small electric motors?

I. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact from amending the current energy conservation standards on manufacturers of small electric motors, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model adapted for equipment covered in this potential rulemaking, with the key output of industry net present value (''INPV''). The qualitative part of the MIA addresses the potential impacts of amended energy conservation standards on manufacturing capacity and industry competition, as well as factors such as equipment characteristics, impacts on particular subgroups of firms, and important market and product trends.

As part of the MIA for small electric motors, DOE intends to analyze the impacts from amending or otherwise revising the energy conservation standards on subgroups of manufacturers of covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code.[16] Manufacturing of small electric motors is classified under NAICS 335312, ''Motor and Generator Manufacturing,'' and the SBA sets a threshold of 1,250 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product/equipment-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon equipment lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue I.1. To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute small electric motors in the United States.

Issue I.2. DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers, as defined by the SBA's size threshold, of small electric motors that sell products in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amending or otherwise revising the energy conservation standards for small electric motors. DOE requests feedback on any potential approaches that could be considered to address impacts on a given manufacturer subgroup, including small businesses.

[16] Available online at *https://www.sba.gov/document/support-table-size-standards.*

Issue I.3. DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of small electric motors associated with (1) other DOE standards applying to different products or equipment that these manufacturers may also make and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on whether to coordinate the effective date of any potential small electric motor energy conservation standards with any other regulatory actions to mitigate any cumulative regulatory burden on manufacturers.

J. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amending or otherwise revising the energy conservation standards for small electric motors.

2. Other

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for small electric motors not already addressed by the specific areas identified in this document.

III. Submission of Comments

DOE invites all interested parties to submit in writing by May 24, 2019, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of potential amended or otherwise revised energy conservations standards for small electric motors. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via *http://www.regulations.gov*. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this

information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process.

Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov*.

Signed in Washington, DC, on March 26, 2019.

Valri Lightner,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–06869 Filed 4–8–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0194; Product Identifier 2019–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports of cracks within the ring gears of a slat geared rotary actuator (SGRA) resulting from a change in the raw material manufacturing process. This proposed AD would require replacement of affected parts with serviceable parts, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 24, 2019.

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 the incorporation by reference (IBR) material described in the ''Related IBR material under 1 CFR part 51'' section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material 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 in the AD docket on the internet at *http://www.regulations.gov.*

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0194; 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 (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

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–2019–0194; Product Identifier 2019–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 EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0020, dated January 31, 2019 (''EASA AD 2019–0020'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states:

> Cracks have been found within the ring gears of an SGRA. Investigation identified that this is due to a change in the manufacturing process of the 300M steel raw material, that did not have adequate post-production non destructive testing for potential cracks. A batch of SGRA has been identified as having been subject to this manufacturing process.
>
> This condition, if not detected and corrected, could, in combination with an independent failure on the second SGRA of the same slat surface, lead to detachment of the slat surface, possibly resulting in reduced control of the aeroplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Airbus issued the SB [Service Bulletin A350–27–P026] to provide instructions to replace the affected parts, referencing the applicable Liebherr SB for in-shop correction.
>
> For the reason described above, this [EASA] AD requires replacement of each affected part with a serviceable part.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0020 describes procedures for replacing the affected SGRAs. This material 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, and it is publicly available through the EASA website.

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 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.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0020 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0020 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0020, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019–0020 that is required for compliance with EASA AD 2019–0020 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0194 after the FAA final rule is published.

Costs of Compliance

We estimate that this proposed AD affects 12 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
25 work-hours × $85 per hour = $2,125	$0	$2,125	$25,500

* We have received no definitive data that would enable us to provide cost estimates for the parts specified in this proposed AD.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

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 and associated appliances 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 SAS: Docket No. FAA–2019–0194; Product Identifier 2019–NM–009–AD.

(a) Comments Due Date

We must receive comments by May 24, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of cracks within the ring gears of a slat geared rotary actuator (SGRA), resulting from a change in the raw material manufacturing process. We are issuing this AD to address cracking of SGRA ring gears. This condition, if not detected and corrected, could, in combination with an independent failure on the second SGRA of the same slat surface, lead to detachment of the slat surface, possibly resulting in reduced control of the airplane and injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2019–0020, dated January 31, 2019 (''EASA AD 2019–0020'').

(h) Exceptions to EASA AD 2019–0020

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0020 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0020 does not apply to this AD.

(i) 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 (j)(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 instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0020 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0020, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD 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. EASA AD 2019–0020 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0194.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

Issued in Des Moines, Washington, on April 1, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–06794 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0129; Product Identifier 2019–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Fischer GmbH Common Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain B/E Aerospace Fischer GmbH Common Seats 170/260 H160. This proposed AD was prompted by the discovery during testing that the energy absorber (EA) may not function as intended during emergency landing. This proposed AD would require removing and replacing the EA assemblies on the affected seats. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 24, 2019.

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 B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: +49 (0) 871 93248–0; fax:+49 (0) 871 93248–22; email: *spares@fischer-seats.de.* 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–2019–0129; 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 mandatory continuing airworthiness information (MCAI), 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: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781- 238–7199; email: *dorie.resnik@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–2019–0129; Product Identifier 2019–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

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0223, dated October 17, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

During dynamic tests of the seat energy absorber, a too long stroke was identified. Analysis indicated that, when the seat is used in low height adjustment during an emergency landing, the energy absorber may not function as intended.

This condition, if not corrected, could lead to impact on lower stop of the energy absorber stroke, possible resulting in injury to the seat occupant.

To address this unsafe condition, B/E Aerospace Fischer issued the SB, providing instructions to replace the seat energy absorber assembly and to re-identify the seat.

For the reason described above, this [EASA] AD requires modification of the affected seats and reidentification.

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–2019–0129.

Related Service Information Under 1 CFR Part 51

We reviewed B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB0718–004, Issue A, dated June 26, 2018. The ASB describes procedures for removing and replacing the EA assemblies on Common Seats 170/260 H160. 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

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 the relevant information provided by EASA 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 removing and replacing the EA assemblies on the affected common seats.

Costs of Compliance

We estimate that this proposed AD affects 341 common seats installed on aircraft 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
Inspect to determine if re-work has been accomplished.	0.2 work-hours × $85 per hour = $17	$0	$17	$5,797
Replace EA Assembly	3 work-hours × $85 per hour = $255	10,000	10,255	3,496,955

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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):

B/E Aerospace Fischer GmbH: Docket No. FAA–2019–0129; Product Identifier 2019–NE–01–AD.

(a) Comments Due Date

We must receive comments by May 24, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to B/E Aerospace Fischer GmbH (B/E Aerospace Fischer) Common Seats 170/260 H160 with a part number and serial number combination listed in Annex A to B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB0718–004, Issue A, dated June 26, 2018.

(2) These seats are known to be installed on, but not limited to: Airbus Helicopters (formerly Airbus Helicopters Deutschland GmbH, Eurocopter Deutschland GmbH, Eurocopter España S.A.) EC135 and EC635 helicopters; and Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) AS 332 L1 and EC 225 LP helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by the discovery during testing that the energy absorber (EA) installed on certain B/E Aerospace Fischer Common Seats 170/260 H160 may not function as intended during emergency landing. We are issuing this AD to prevent malfunction of the EA on the seat. The unsafe condition, if not addressed, could result in injuries to the occupants during an emergency landing.

(f) Compliance

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

(g) Required Actions

Within 12 months or 1,000 flight hours, whichever occurs first, after the effective date of this AD:

(1) Review each affected B/E Aerospace Fischer Common Seat as identified by part number and serial number in Annex A of the B/E Aerospace Fischer ASB No. SB0718–004, Issue A, dated June 26, 2018 to determine if rework has already been performed. If the rework has been performed, the seat will be marked with a placard stating ''SB0718–004A implemented'' and no further action is required.

(2) Rework the affected seats in accordance with paragraphs 1 and 2 in B/E Aerospace Fischer ASB No. SB01718–004, Issue A, dated June 26, 2018. Once the rework is complete, mark the seat by installing a placard in accordance with paragraph 3 in B/E Aerospace Fischer ASB No. SB01718–004 except submittal of the reply form to B/E Aerospace Fischer is not required.

(h) Installation Prohibition

From the effective date of this AD, do not install any seat affected by this AD onto any aircraft unless the seat is marked with a placard stating completion of B/E Aerospace Fischer ASB No. SB0718–004, Issue A, dated June 26, 2018.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston 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 Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0223, dated October 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–2019–0129.

(3) For service information identified in this AD, contact B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: +49 (0) 871 93248–0; fax:+49 (0) 871 93248–22; email: *spares@fischer-seats.de.* You may view this referenced 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.

Issued in Burlington, Massachusetts, on September 4, 2019.

Karen M. Grant,

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

[FR Doc. 2019–06985 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

[Docket No. CPSC–2019–0007]

Petition Requesting Rulemaking To Amend Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) received a petition from the Outdoor Power Equipment Industry (petitioner, or OPEI), requesting a revision to the warning label requirement for the Safety Standard for Walk-Behind Power Lawn Mowers. The CPSC invites written comments concerning this petition.

DATES: Submit comments by June 10, 2019.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2019–0007, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal identifiers, contact information, or other personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail/hand delivery/courier.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2019–0007 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–6833; email: *RHammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On February 19, 2019, OPEI submitted a petition to the CPSC to initiate rulemaking to revise the warning requirement for the Safety Standard for Walk-Behind Power Lawn Mowers codified at 16 CFR part 1205 (CPSC standard). Specifically, OPEI requests that the Commission amend the CPSC standard to allow for a pictorial-only warning as an alternative to the warning label for reel-type and rotary power mowers required by 16 CFR 1205.6(a) (Figure 7). According to OPEI, a pictorial-only warning will help provide consumers with understandable, non-language warnings to improve consumer safety and also modernize and globally harmonize the warning for all consumers. OPEI contends that the petition seeks a limited, non-material change to the CPSC standard.

By this notice, CPSC seeks comments concerning this petition. The petition is available at: *http://www.regulations.gov,* under Docket No. CPSC–2019–0007, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–06841 Filed 4–8–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

RIN 1235–AA26

Joint Employer Status Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This proposed rulemaking is intended to update and clarify the Department of Labor's (Department) interpretation of joint employer status under the Fair Labor Standards Act (FLSA or Act), which has not been significantly revised in over 60 years. The proposed changes are designed to promote certainty for employers and employees, reduce litigation, promote greater uniformity among court decisions, and encourage innovation in the economy.

DATES: Submit written comments on or before June 10, 2019.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA26, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. All

submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this Notice of Proposed Rulemaking (NPRM) may be obtained in alternative formats (Large Print, Audio Tape, or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats. Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FLSA requires covered employers to pay nonexempt employees at least the federal minimum wage for all hours worked and overtime for all hours worked over 40 in a workweek.[1] Although the FLSA does not use the term ''joint employer,'' the Act contemplates situations where additional persons [2] are jointly and severally liable with the employer for the employee's wages due under the Act.

Over 60 years ago, in 1958, the Department promulgated a regulation, codified at part 791 of Title 29, Code of Federal Regulations (CFR), interpreting joint employer status under the Act.[3] The Department has not meaningfully revised this regulation since its promulgation. Under part 791, multiple persons can be joint employers of an employee if they are ''not completely disassociated'' with respect to the employment of the employee.[4] Part 791 does not adequately explain what it means to be ''not completely disassociated'' in one of the joint employer scenarios—where the employer suffers, permits, or otherwise employs the employee to work one set of hours in a workweek, and that work simultaneously benefits another person. In that scenario, the employer and the other person are almost never ''completely disassociated,'' and the real question is not whether they are associated but whether the other person's actions in relation to the employee merit joint and several liability under the Act. Additional guidance could therefore be helpful. Accordingly, the Department proposes to revise part 791 to provide additional guidance for determining whether the other person is a joint employer in that scenario.[5]

The Department proposes that if an employee has an employer who suffers, permits, or otherwise employs the employee to work and another person simultaneously benefits from that work, the other person is the employee's joint employer under the Act for those hours worked only if that person is acting directly or indirectly in the interest of the employer in relation to the employee.[6] To make that determination simpler and more consistent, the Department proposes to adopt a four-factor balancing test derived (with one modification) from *Bonnette* v. *California Health & Welfare Agency.*[7] A plurality of circuit courts use or incorporate *Bonnette's* factors in their joint-employer test. The Department's proposed test would assess whether the potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

These factors are consistent with section 3(d) of the FLSA, which defines an ''employer'' to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee,'' 29 U.S.C. 203(d), and with Supreme Court precedent. They are clear and easy to understand. They can be used across a wide variety of contexts. And they are highly probative of the ultimate inquiry in determining joint employer status: Whether a potential joint employer, as a matter of economic reality, actually exercises sufficient control over an employee to qualify as a joint employer under the Act.

As mentioned above, the Department proposes to modify the first *Bonnette* factor to explain that a person's ability, power, or reserved contractual right to act with respect to the employee's terms and conditions of employment would not be relevant to that person's joint employer status under the Act. Only actions taken with respect to the employee's terms and conditions of employment, rather than the theoretical ability to do so under a contract, are relevant to joint employer status under the Act. Requiring the actual exercise of power ensures that the four-factor test is consistent with the provision of 3(d) that determines joint employer status, which requires an employer to be ''acting . . . in relation to an employee.'' [8]

The Department also proposes to explain that additional factors may be relevant to this joint employer analysis, but only if they are indicia of whether the potential joint employer is:

- Exercising significant control over the terms and conditions of the employee's work; or
- Otherwise acting directly or indirectly in the interest of the employer in relation to the employee.

The Department further proposes to explain that, in determining the economic reality of the potential joint employer's status under the Act, whether an employee is economically dependent on the potential joint

[1] *See* 29 U.S.C. 206(a), 207(a).

[2] Under the Act, ''person'' means ''any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.'' 29 U.S.C. 203(a).

[3] *See* 23 FR 5905 (Aug. 5, 1958).

[4] 29 CFR 791.2(a).

[5] The Department's current regulation identifies two distinct joint employer scenarios, which is consistent with its enforcement experience. *See* 29 CFR 791.2(b) (one scenario is ''[w]here the employee performs work which simultaneously benefits two or more employers''; the other is where the employee ''works for two or more employers at different times during the workweek'').

[6] *See* 29 U.S.C. 203(d) (''Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee. . . .'').

[7] 704 F.2d 1465 (9th Cir. 1983), *abrogated on other grounds, Garcia* v. *San Antonio Metro. Transit Auth.,* 469 U.S. 528 (1985).

[8] 29 U.S.C. 203(d).

employer is not relevant.[9] As such, the Department proposes to identify certain ''economic dependence'' factors that are not relevant to the joint employer analysis. Those factors would include, but would not be limited to, whether the employee:

- Is in a specialty job or a job otherwise requiring special skill, initiative, judgment, or foresight;
- Has the opportunity for profit or loss based on his or her managerial skill; and
- Invests in equipment or materials required for work or for the employment of helpers.

In addition, the Department's proposal would note that a joint employer may be any ''person'' as defined by the Act, which includes ''any organized group of persons.'' [10] It would also explain that a person's business model (such as a franchise model), certain business practices (such as allowing an employer to operate a store on the person's premises or participating in an association health or retirement plan), and certain business agreements (such as requiring an employer in a business contract to institute sexual harassment policies), do not make joint employer status more or less likely under the Act.

In the other joint employer scenario under the Act—where multiple employers suffer, permit, or otherwise employ the employee to work separate sets of hours in the same workweek—the Department is proposing only non-substantive revisions that better reflect the Department's longstanding practice. Part 791's current focus on the association between the potential joint employers is useful for determining joint employer status in this scenario. If the multiple employers are joint employers in this scenario, then the employee's separate hours worked for them in the workweek are aggregated for purposes of complying with the Act's overtime pay requirement.

Finally, the Department's proposed rule would include several other provisions. First, it would reiterate that a person who is a joint employer is jointly and severally liable with the employer and any other joint employers for all wages due to the employee under the Act.[11] Second, it would provide a number of illustrative examples that apply the Department's proposed joint employer rule. Third, it would contain a severability provision.

Employee earnings and overtime pay under the Act would not be affected by the proposed rule. Employers would remain obligated to comply with the FLSA in all respects, including its minimum-wage and overtime provisions.

The Department believes that all of the above proposals would be consistent with the text of the Act and supported by judicial precedent. The Department further believes that these proposals would clarify the scope of joint employer status under the Act, thereby reducing litigation and compliance costs, easing administration of the law, and offering guidance to courts, which may result in greater uniformity among court decisions.

This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Discussion of the estimated reduced burdens and cost savings of this proposed rule can be found in the NPRM's economic analysis. The Department welcomes comments from the public on any aspect of this NPRM.

II. Background

The FLSA requires covered employers to pay their employees at least the federal minimum wage for every hour worked and overtime for every hour worked over 40 in a workweek.[12] The FLSA defines the term ''employee'' in section 3(e)(1) to mean ''any individual employed by an employer,'' [13] and defines the term ''employ'' to include ''to suffer or permit to work.'' [14] ''Employer'' is defined in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [15]

One year after the FLSA's enactment, in July 1939, WHD issued Interpretative Bulletin No. 13 addressing, among other topics, whether two or more companies could be jointly and severally liable for a single employee's hours worked under the Act.[16] The Bulletin acknowledged the possibility of joint employer liability and provided an example where two companies arranged ''to employ a common watchman'' who had ''the duty of watching the property of both companies concurrently for a specified number of hours each night.'' [17] The Bulletin concluded that the companies ''are not each required to pay the minimum rate required under the statute for all hours worked by the watchman . . . but . . . should be considered as a joint employer for purposes of the [A]ct.'' [18]

The Bulletin also set forth a second example where an employee works 40 hours for company A and 15 hours for company B during the same workweek.[19] The Bulletin explained that if A and B are ''acting entirely independently of each other with respect to the employment of the particular employee,'' they are not joint employers and may ''disregard all work performed by the employee for the other company'' in determining their obligations to the employee under the Act for that workweek.[20] On the other hand, if ''the employment by A is not completely disassociated from the employment by B,'' they are joint employers and must consider the hours worked for both as a whole to determine their obligations to the employee under the Act for that workweek.[21] Relying on section 3(d), the Bulletin concluded by saying that, ''at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company.'' [22]

In 1958, the Department published a regulation, codified in 29 CFR part 791, that expounded on Interpretative Bulletin No. 13.[23] Section 791.2(a) reiterated that joint employer status depends on whether multiple persons are ''not completely disassociated'' or ''acting entirely independently of each other'' with respect to the employee's employment.[24] Section 791.2(b) explained, ''Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek,'' they are generally considered joint employers:

[9] As explained below, economic dependence only measures whether a worker is an employee under the Act or an independent contractor.

[10] 29 U.S.C. 203(a).

[11] This means that for every workweek that they are joint employers, the employer and all joint employers are each fully responsible for the entire amount of minimum wages and overtime pay due to the employee in that workweek. If one of them is unable or unwilling to pay, the others are responsible for the full amount owed.

[12] *See* 29 U.S.C. 206(a), 207(a).

[13] 29 U.S.C. 203(e)(1).

[14] 29 U.S.C. 203(g).

[15] 29 U.S.C. 203(d).

[16] *See* Interpretative Bulletin No. 13, ''Hours Worked: Determination of Hours for Which Employees are Entitled to Compensation Under the Fair Labor Standards Act of 1938,'' ¶¶ 16–17. In October 1939 and October 1940, the Department revised other portions of the Bulletin that are not pertinent here.

[17] *Id.* ¶ 16.

[18] *Id.*

[19] *See id.* ¶ 17.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See* 23 FR 5905 (Aug. 5, 1958).

[24] 29 CFR 791.2(a).

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[25]

In 1961, the Department amended a footnote in the regulation to clarify that a joint employer is also jointly liable for overtime pay.[26] Since this 1961 update, the Department has not published any other updates to part 791.

In 1973, the Supreme Court decided a joint employer case in *Falk* v. *Brennan*.[27] *Falk* did not cite or rely on part 791, but instead used section 3(d) to determine whether an apartment management company was a joint employer of the employees of the apartment buildings that it managed.[28] The Court held that, because the management company exercised ''substantial control [over] the terms and conditions of the [employees'] work,'' the management company was an employer under 3(d), and was therefore jointly liable with the building owners for any wages due to the employees under the FLSA.[29]

In 1983, the Ninth Circuit issued a seminal joint employer decision, *Bonnette* v. *California Health & Welfare Agency*.[30] In *Bonnette,* seniors and individuals with disabilities receiving state welfare assistance (the ''recipients'') employed home care workers as part of a state welfare program.[31] Taking an approach similar to *Falk,* the court addressed whether California and several of its counties (the ''counties'') were joint employers of the workers under section 3(d).[32] In determining whether the counties were jointly liable for the home care workers under 3(d), the court found ''four factors [to be] relevant'': ''whether the alleged [joint] employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.'' [33] The court noted that these four factors ''are not etched in stone and will not be blindly applied'' and that the determination of joint employer status depends on the circumstances of the whole activity.[34] Applying the four factors, the court concluded that the counties ''exercised considerable control'' and ''had complete economic control'' over ''the nature and structure of the employment relationship'' between the recipients and home care workers, and were therefore ''employers'' under 3(d), jointly and severally liable with the recipients to the home care workers.[35]

In 2014, the Department issued Administrator's Interpretation No. 2014–2, concerning joint employer status in the context of home care workers.[36] The Home Care AI described, consistent with § 791.2, a joint employer as an additional employer who is ''not completely disassociated'' from the other employer(s) with respect to a common employee, and further explained that section 3(g) determines the scope of joint employer status.[37] The Home Care AI opined that ''the focus of the joint employer regulation is the degree to which the two possible joint employers share control with respect to the employee and the degree to which the employee is economically dependent on the purported joint employers.'' [38] The Home Care AI opined that ''a set of [joint employer] factors that addresses only control is not consistent with the breadth of [joint] employment under the FLSA'' because section 3(g)'s ''suffer or permit'' language governs FLSA joint employer status.[39] However, the Home Care AI applied the four *Bonnette* factors as part of a larger multi-factor analysis that provided specific guidance about joint employer status in the home care industry.[40]

In 2016, the Department issued Administrator's Interpretation No. 2016–1 concerning joint employer status under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which the Department intended to be ''harmonious'' and ''read in conjunction with'' the Home Care AI's discussion of joint employer status.[41] The Joint Employer AI also described section 3(g) as determining the scope of joint employer status.[42] The Joint Employer AI opined that ''joint employment, like employment generally, 'should be defined expansively.' '' [43] It further opined that, ''joint employment under the FLSA and MSPA [is] notably broader than the common law . . . which look[s] to the amount of control that an employer exercises over an employee.'' [44] The Joint Employer AI concluded that, because ''the expansive definition of 'employ' '' in both the FLSA and MSPA ''rejected the common law control standard,'' ''the scope of employment relationships and joint employment under the FLSA and MSPA is as broad as possible.'' [45] The Department rescinded the Joint Employer AI effective June 7, 2017.[46]

Need for Rulemaking

As noted, the Department has not meaningfully revised its joint employer regulation, 29 CFR part 791, since its promulgation in 1958. The current regulation provides some helpful guidance for determining joint employer status, but as explained below, the Department believes that it is helpful to offer additional guidance on how to determine joint employer status in one of the joint employer scenarios under the Act—where an employer suffers, permits, or otherwise employs an employee to work, and another person simultaneously benefits from that work.

Part 791 currently determines joint employer status by asking whether multiple persons are ''not completely disassociated'' with respect to the employment of a particular employee.[47] This standard, however, does not provide adequate guidance for resolving the situation where an employee's work for an employer simultaneously benefits another person (for example, where the employer is a subcontractor or staffing

[25] 29 CFR 791.2(b) (footnotes omitted).

[26] *See* 26 FR 7732 (Aug. 18, 1961).

[27] *See* 414 U.S. 190.

[28] *See id.* at 195.

[29] *Id.*

[30] *See* 704 F.2d 1465. Although the Ninth Circuit later adopted a thirteen-factor test in *Torres-Lopez* v. *May,* 111 F.3d 633, 639–41 (9th Cir. 1997), *Bonnette* remains relevant because many courts have treated it as the baseline for their own joint employer tests.

[31] *See* 704 F.2d at 1467–68.

[32] *See id.* at 1469–70.

[33] *Id.* at 1470.

[34] *Id.*

[35] *Id.*

[36] WHD Administrator's Interpretation No. 2014–2, ''Joint Employment of Home Care Workers in Consumer-Directed, Medicaid-Funded Programs by Public Entities under the Fair Labor Standards Act'' [hereinafter Home Care AI], available at *http://www.dol.gov/whd/opinion/adminIntrprtn/FLSA/2014/FLSAAI2014_2.pdf.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See id.*

[41] WHD Administrator's Interpretation No. 2016–1, ''Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act'' [hereinafter Joint Employer AI].

[42] *See id.*

[43] *Id.* (quoting *Torres-Lopez,* 111 F.3d at 639).

[44] *Id.*

[45] *Id.*

[46] *See* U.S. Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance, (2017), available at *https://www.dol.gov/newsroom/releases/opa/opa20170607.*

[47] *See* 29 CFR 791.2(a).

agency, and the other person is a general contractor or staffing agency client). In this scenario, the employer and the other person are almost never ''completely disassociated.'' The ''not completely disassociated'' standard may therefore suggest—contrary to the Department's longstanding position—that these situations always result in joint employer status. Moreover, courts have generally not focused on the degree of association between the employer and potential joint employer in this scenario. Therefore, it would be helpful to clarify the standard for joint employer status in order to give the public more meaningful guidance and proper notice of what the regulation actually requires.

It would also be helpful to revise part 791 given the current judicial landscape. Circuit courts currently use a variety of multi-factor tests to determine joint employer status, and as a result, organizations operating in multiple jurisdictions may be subject to joint employer liability in one jurisdiction, but not in another, for the same business practices. The Department's proposed four-factor test, if adopted, would provide guidance to courts that may promote greater uniformity among court decisions. This would promote fairness and predictability for organizations and employees.

Additionally, revising the Department's regulation could promote innovation and certainty in business relationships. The modern economy involves a web of complex interactions filled with a variety of unique business organizations and contractual relationships. When an employer contemplates a business relationship with another person, the other person may not be able to assess what degree of association with the employer will result in joint and several liability for the employer's employees. Indeed, the other person may be concerned by such liability despite having insignificant control over the employer's employees. This uncertainty could impact the other person's willingness to engage in any number of business practices vis-à-vis the employer—such as providing a sample employee handbook, or other forms, to the employer as part of a franchise arrangement; allowing the employer to operate a facility on its premises; using or establishing an association health plan or association retirement plan that is also used by the employer; or jointly participating with the employer in an apprenticeship program. Uncertainty regarding joint liability could also impact that person's willingness to bargain for certain contractual provisions with the employer—such as requiring the employer to institute workplace safety practices, a wage floor, sexual harassment policies, morality clauses, or other measures intended to encourage compliance with the law or to promote other desired business practices. To provide more certainty when organizations are considering these and other business practices, it would be helpful for the Department to provide more clarity about what kinds of activities could result in joint employer status.

It would also be helpful for the Department to clarify that a person's business model does not make joint employer status more or less likely under the Act. Part 791 is currently silent on this point, and that silence may cause unnecessary confusion and uncertainty. For example, a business that contracts with a staffing agency to receive labor services is ''not completely disassociated'' from the staffing agency, but that business is not more or less likely to be a joint employer simply because it uses a staffing agency. Similarly, a franchisor and franchisee are ''not completely disassociated.'' However, when the Department investigates a typical franchisee for potential FLSA violations, the Department does not seek recovery from the franchisor as a joint employer simply because it has a franchise arrangement. It is therefore helpful for the Department to explain its longstanding position that a business model—such as the franchise model—does not itself indicate joint employer status under the FLSA. Under the FLSA, a person is a joint employer if it is ''acting . . . in relation to'' an employee of an employer—not simply because it has a certain business model.[48]

It would also be helpful to revise the current regulation to explain the statutory basis for joint employer status under the Act. It is axiomatic that any Department interpretation of the FLSA must begin with the text of the statute, following well-settled principles of statutory construction by ''reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.'' [49] There are three terms defined in the Act (''employee,'' ''employ,'' and ''employer'' [50]) that could potentially be relevant to the joint employer analysis, but the current part 791 does not clearly identify the textual basis for the scope of joint employer status under the Act. Clarifying the textual basis for joint employer status would help ensure that the Department's guidance on this subject is fully consistent with the text of the Act.

Finally, it would be helpful for the Department to update its guidance regarding joint employer status given public interest in the issue. Recently, the National Labor Relations Board (NLRB) issued decisions that altered its analysis for determining joint employer status under the National Labor Relations Act (NLRA) (a separate statute from the FLSA).[51] The NLRB is engaging in rulemaking regarding the joint employer standard under the NLRA.[52] In recent years, Congress has held hearings and considered legislation on joint employer status.[53] In addition, 84 U.S. Representatives and 26 Senators have expressed their concern and have urged the Department to update part 791.[54] These and other developments have generated a tremendous amount of attention, concern, and debate about joint employer status in every context, including the FLSA. Rulemaking would help bring clarity to this discussion.

III. Proposed Regulatory Revisions

The Department proposes to revise its existing joint employer regulation in part 791 to address these issues. In relevant part, and as discussed in greater detail below, the Department proposes:

- To make non-substantive revisions to the introductory provision in section 791.1;
- To replace the language of ''not completely disassociated'' as the standard in one of the joint employer scenarios—where an employer suffers, permits, or otherwise employs an employee to work one set of hours in a

[48] 29 U.S.C. 203(d).

[49] *See Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1, 7 (2011) (interpreting the FLSA) (internal quotation marks and citation omitted).

[50] *See* 29 U.S.C. 203(d), (e)(1), (g).

[51] *See Browning-Ferris Indus. of California, Inc.,* 362 NLRB No. 186 (Aug. 27, 2015).

[52] *See* The Standard for Determining Joint-Employer Status, 83 FR 46,681, 46,686 (Sept. 14, 2018).

[53] *See* House Cmte. on Educ. & the Workforce, Hearing: ''Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship'' (July 12, 2017), *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=106218;* Senate Cmte. on Health, Educ., Labor, & Pensions, Hearing: ''Who's the Boss? The 'Joint Employer' Standard and Business Ownership (Feb. 5, 2015), *https://www.govinfo.gov/content/pkg/CHRG-114shrg93358/pdf/CHRG-114shrg93358.pdf;* H.R. 3441, 115th Congress (2017–2018), Save Local Business Act.

[54] *See* Byrne Leads Bipartisan Letter Asking Acosta to Act on Joint Employer, (2018), *https://byrne.house.gov/media-center/press-releases/byrne-leads-bipartisan-letter-asking-acosta-to-act-on-joint-employer.* On September 28, 2018, Senator Isakson sent a similar letter to the Department, signed by 25 other Senators.

workweek, and that work simultaneously benefits another person—with a four-factor balancing test assessing whether the other person:
- Hires or fires the employee;
- Supervises and controls the employee's work schedules or conditions of employment;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records;

• To explain that additional factors may be used to determine joint employer status, but only if they are indicative of whether the potential joint employer is:
- Exercising significant control over the terms and conditions of the employee's work; or
- Otherwise acting directly or indirectly in the interest of the employer in relation to the employee;

• To explain that the employee's ''economic dependence'' on the potential joint employer does not determine the potential joint employer's liability under the Act;

• To identify three examples of ''economic dependence'' factors that are not relevant for determining joint employer status under the Act—including, but not limited to, whether the employee:
- Is in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight;
- Has the opportunity for profit or loss based on his or her managerial skill; and
- Invests in equipment or materials required for work or the employment of helpers;

• To explain that the potential joint employer's ability, power, or reserved contractual right to act in relation to the employee is not relevant for determining the potential joint employer's liability under the Act;

• To clarify that indirect action in relation to an employee may establish joint employer status under the Act;

• To explain that FLSA section 3(d) only, not section 3(e)(1) or 3(g), determines joint employer status under the Act;

• To clarify that a person's business model—for example, operating as a franchisor—does not make joint employer status more or less likely under the Act;

• To explain that certain business practices—for example, providing a sample employee handbook to a franchisee; participating in or sponsoring an association health or retirement plan; allowing an employer to operate a facility on one's premises; or jointly participating with an employer in an apprenticeship program—do not make joint employer status more or less likely under the Act;

• To explain that certain business agreements—for example, requiring an employer to institute workplace safety measures, wage floors, sexual harassment policies, morality clauses, or requirements to comply with the law or promote other desired business practices—do not make joint employer status more or less likely under the Act;

• To make non-substantive clarifications to the joint employer standard for the other joint employer scenario under the Act—where multiple employers suffer, permit, or otherwise employ an employee to work separate sets of hours in the same workweek; and

• To provide illustrative examples demonstrating how the Department's proposed joint employer regulation would apply.

These proposed revisions to part 791 would significantly clarify how to determine joint employer status under the Act.

The Department welcomes comment on all aspects of its proposal.

A. Proposal To Replace the ''Not Completely Disassociated'' Standard With a Four-Factor Balancing Test for One of the Joint Employer Scenarios Under the Act (One Set of Hours)

Part 791 currently determines joint employer status by asking whether two or more persons are ''not completely disassociated with respect to the employment of a particular employee.'' [55] This standard is not as helpful for determining joint employer status in one of the joint employer scenarios under the Act—where an employer suffers, permits, or otherwise employs an employee to work one set of hours in a workweek, and that work simultaneously benefits another person.[56] The Department therefore proposes to replace the ''not completely disassociated'' standard in this scenario with a four-factor balancing test derived (with one modification) from *Bonnette* v. *California Health & Welfare Agency.* The proposed test would assess whether the other person:
- Hires or fires the employee;
- Supervises and controls the employee's work schedules or conditions of employment;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.[57]

These proposed factors focus on the economic realities of the potential joint employer's exercise of control over the terms and conditions of the employee's work.[58] They closely track the language of *Bonnette,* with a modification to the first factor.[59] Whereas *Bonnette* describes the first factor as the ''power'' to hire and fire, the Department proposes rephrasing this factor to require actual exercise of power to ensure that its four-factor test is fully consistent with the text of section 3(d), which requires a person be ''acting . . . in relation to an employee.'' [60] The Department's proposal would also clarify that, under 3(d), the potential joint employer's actions in relation to the employee may be ''indirect.'' [61] The Department believes that its four proposed factors—which weigh the economic reality of the potential joint employer's active control, direct or indirect, over the employee—would be most relevant to the joint employer analysis for several reasons.

First, these four factors are fully consistent with the text of the section 3(d). When another person exercises control over the terms and conditions of the employee's work, that person is ''acting . . . in the interest of'' the employer ''in relation to'' the employee.[62] Recognizing this provision, *Bonnette* adopted an almost identical four-factor test to determine whether a potential joint employer is liable under 3(d).[63]

Second, these factors are consistent with Supreme Court precedent. The Supreme Court held in *Falk* v. *Brennan* that under 3(d) another person is jointly liable for an employee if that person exercises ''substantial control'' over the terms and conditions of the employee's

[55] *See* 29 CFR 791.2. The regulation similarly advises that joint employer liability does not exist where ''two or more employers are acting entirely independently of each other.'' *Id.*

[56] Under the Act, ''person'' means ''any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.'' 29 U.S.C. 203(a).

[57] *Cf.* 704 F.2d at 1470 (considering ''whether the alleged [joint] employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records'' (quotation marks omitted)).

[58] *Cf. id.* (''The appellants exercised considerable control over the nature and structure of the employment relationship.'').

[59] *See id.* (considering whether the potential joint employer ''had the power to hire and fire the employees,'' rather than whether the potential joint employer actually hired or fired them).

[60] *See* 29 U.S.C. 203(d).

[61] *See id.* ('''Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee. . . .'').

[62] *Id.*

[63] *See* 704 F.2d at 1469–70 (''We conclude that, under the FLSA's liberal definition of ''employer'' [in section 3(d)], the appellants were employers of the chore workers.'').

work.[64] The Department's proposed four-factor balancing test, which weighs the potential joint employer's exercise of control over the terms and conditions of the employee's work, uses the same reasoning as *Falk* to determine joint employer status under 3(d).

Third, these factors are highly probative of joint employer status under the Act. Each factor weighs the potential joint employer's exercise of control over the more essential terms and conditions of employment. The potential joint employer's exercise of this control therefore has a direct relation to the employee's work. And this direct relation makes it reasonable to hold the potential joint employer liable for the employee's work. Accordingly, the Department's proposed test focuses on those facts that strongly indicate joint and several liability under the Act.

Fourth, these factors are simple, clear-cut, and easy to apply. The greater the number of factors in a multi-factor test, the more complex and difficult the analysis may be in any given case, and the greater the likelihood of inconsistent results in other similar cases. By using these factors that focus on the exercise of control over the more essential terms and conditions of employment, the Department believes its proposed test would determine FLSA joint employer status with greater ease and consistency. This simplicity would also provide greater certainty to the public, helping workers and organizations to determine more accurately who is and is not a joint employer under the Act before any investigation or litigation begins.

Fifth, these factors are generally applicable and are almost always present in the scenario where an employee's work for an employer simultaneously benefits another person. Therefore they should be helpful for determining joint employer status in a wide variety of contexts.

Sixth, the Department's proposed four-factor test finds considerable support in the plurality of circuit courts that already apply similar multi-factor, economic realities tests. The First and Fifth Circuits apply the *Bonnette* test, which is nearly identical to the Department's proposed test.[65] The Seventh Circuit uses this same test as a baseline to determine joint employer status under the FMLA,[66] and district courts in the Seventh Circuit apply it in FLSA cases.[67] Moreover, the Third Circuit applies a similar four-factor test that considers whether the potential joint employer:

- Has authority to hire and fire employees;
- Has authority to promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours;
- Exercises day-to-day supervision, including employee discipline; and
- Controls employee records, including payroll, insurance, taxes, and the like.[68]

According to the Third Circuit, ''[t]hese factors are not materially different from'' the *Bonnette* factors.[69] Finally, additional precedent supports the Department's proposed factors.[70]

Although four other circuit courts apply different joint employer tests, each of them applies at least one factor that resembles one of the Department's proposed factors derived from the *Bonnette* test.[71] The Second and Fourth Circuits rejected the *Bonnette* test because they did not believe it could ''be reconciled with the 'suffer or permit' language in [FLSA section 3(g)], which necessarily reaches beyond traditional agency law.'' [72] But the Department believes that section 3(d), not section 3(g), is the touchstone for joint employer status and that its proposed four-factor balancing test is preferable and consistent with the text of that section.

B. Proposal To Explain What Additional Joint Employer Factors Could Be Relevant

The Department proposes to revise part 791 to address whether any additional factors may be relevant for determining joint employer status. Because joint employer status is determined by 3(d), the Department proposes to explain that any additional factors must be consistent with the text of 3(d). Thus, any additional factors indicating ''significant control'' [73] are relevant because the potential joint employer's exercise of significant control over the employee's work establishes its joint liability under 3(d).[74] Finally, the Department proposes to explain that any factors that do not fit within these parameters—as indicative of significant control or otherwise consistent with the text of 3(d)—are not relevant to the joint employer analysis.

These proposals would not take away from the dynamic and fact-bound nature of the joint employer inquiry, but they would recognize that the text of 3(d) determines the scope of—and therefore

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[64] *See* 414 U.S. at 195 (''In view of the expansiveness of the Act's definition of 'employer' [in section 3(d)] and the extent of D & F's managerial responsibilities at each of the buildings, which gave it substantial control of the terms and conditions of the work of these employees, we hold that D & F is, under the statutory definition [in 3(d)], an 'employer' of the maintenance workers.'').

[65] *Baystate Alternative Staffing, Inc.* v. *Herman,* 163 F.3d 668, 675–76 (1st Cir. 1998); *see Gray* v. *Powers,* 673 F.3d 352, 355–57 (5th Cir. 2012). Although *Gray* involved whether an individual owner of the employer was jointly liable under the FLSA, the court noted that it ''must apply the economic realities test to each individual or entity alleged to be an employer and each must satisfy the four part test.'' 673 F.3d at 355 (quotation marks and citation omitted)). Two older Fifth Circuit decisions applied a different test to determine whether an entity was a joint employer under the Act, and the Fifth Circuit has not yet overruled those decisions—creating some uncertainty about what joint employer test applies in the Fifth Circuit. *See Hodgson* v. *Griffin & Brand of McAllen, Inc.,* 471 F.2d 235, 237–38 (5th Cir. 1973); *Wirtz* v. *Lone Star Steel Co.,* 405 F.2d 668, 669–670 (5th Cir. 1968).

[66] *See Moldenhauer* v. *Tazewell-Pekin Consol. Commc'ns Ctr.,* 536 F.3d 640, 641–42 (7th Cir. 2008) (''[W]e hold generally that . . . each alleged [joint] employer must exercise control over the working conditions of the employee . . .'' (citing *Reyes* v. *Remington Hybrid Seed Co.,* 495 F.3d 403, 408 (7th Cir. 2007)). While the Seventh Circuit's FLSA decision in *Reyes* did not use the *Bonnette* factors, the court in *Moldenhauer* stated that *Reyes* ''held that both the farm that employed migrant workers and the recruiter who placed the workers at the farm . . . controlled the workers' daily activities and working conditions.'' *Moldenhauer,* 536 F.3d at 644 (citing *Reyes,* 495 F.3d at 404–08).

[67] *See, e.g., In re Jimmy John's Overtime Litig.,* Nos. 14 C 5509, 15 C 1681, & 15 C 6010, 2018 WL 3231273, at *13–14 (N.D. Ill. June 14, 2018); *Babych* v. *Psychiatric Solutions, Inc.,* No. 09 C 8000, 2011 WL 5507374, at *6–8 (N.D. Ill. Nov. 9, 2011).

[68] *In re Enter. Rent-A-Car Wage & Hour Emp't Practices Litig.,* 683 F.3d 462, 469–71 (3d Cir. 2012).

[69] *Id.* at 469.

[70] *See Bacon* v. *Subway Sandwiches & Salads LLC,* 2015 WL 729632, at *4 (E.D. Tenn. Feb. 19, 2015) (applying in an FLSA case three factors similar to the *Bonnette* factors); *Ash* v. *Anderson Merchandisers, LLC,* 799 F.3d 957, 961 (8th Cir. 2015) (suggesting in an FLSA case that three factors similar to the *Bonnette* factors would apply to determine joint employer status).

[71] *See Salinas* v. *Commercial Interiors, Inc.,* 848 F.3d 125, 141–42 (4th Cir. 2017) (of the six factors comprising the first step of its joint employer analysis, applying three factors resembling the *Bonnette* factors); *Layton* v. *DHL Exp. (USA), Inc.,* 686 F.3d 1172, 1176 (11th Cir. 2012) (applying an eight-factor test with five factors resembling the *Bonnette* factors); *Zheng* v. *Liberty Apparel Co. Inc.,* 355 F.3d 61, 72 (2d Cir. 2003) (applying a six-factor test with one factor resembling one of the *Bonnette* factors); *Torres-Lopez,* 111 F.3d at 639–41 (applying a thirteen-factor test with five factors resembling the *Bonnette* factors).

[72] *Salinas,* 848 F.3d at 136 (quotation marks omitted); *Zheng,* 355 F.3d at 69.

[73] *Enterprise,* 683 F.3d at 470 (holding that additional joint employer factors should be ''indicia of 'significant control' '' (citing *Moldenhauer,* 536 F.3d at 645 (''In *Reyes* and *Grace,* the primary employer placed workers with the alleged secondary employer, but both employers maintained significant control over the employee and were thus found to be joint employers.'' (citations omitted)))).

[74] *See, e.g., Falk,* 414 U.S. at 195 (finding joint employer liability under 3(d) where the potential joint employer exercised ''substantial control [over] the terms and conditions of the [employees'] work''); *Bonnette,* 704 F.2d at 1470 (finding joint employer liability under 3(d) where the potential joint employer ''exercised considerable control'' and ''had complete economic control'' ''over the nature and structure of the employment relationship'').

places limitations on—joint liability. The Department believes that these proposals would provide workers and organizations with more certainty regarding joint employer status under the Act.

C. Proposal To Explain That Joint Employer Status Under the Act Is Not Determined by the Employee's ''Economic Dependence'' and To Identify Three Examples of ''Economic Dependence'' Factors That Are Not Relevant

The Department proposes to explain that joint employer status is not determined by the employee's ''economic dependence'' on the potential joint employer and to identify three examples of ''economic dependence'' factors that are not relevant to the Department's proposed multi-factor test and section 3(d). Identifying specific factors that are not relevant will help the public to have more certainty over what factors to apply when determining whether a person qualifies as a joint employer under the Act.

Because section 3(d) establishes joint liability for ''any person acting directly or indirectly in the interest of an employer in relation to an employee,'' [75] joint employer status is determined by the actions of the potential joint employer—not by the actions of the employee or his or her employer.[76] As such, any factors that focus on the actions of the employee or his or her employer are not relevant to the joint employer inquiry, including those focusing on the employee's ''economic dependence.'' The Department therefore proposes to explain that joint employer status is determined by the actions of the potential joint employer—not by the employee's economic dependence—and to identify three examples of economic dependence factors that are not relevant.

Specifically, the Department proposes to identify as not relevant whether the employee: (1) Is in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight; (2) has the opportunity for profit or loss based on his or her managerial skill; and (3) invests in equipment or materials required for work or the employment of helpers. These three factors focus on whether the employee is correctly classified as such under the Act—and not on whether the potential joint employer is acting in the interest of the employer in relation to the employee. While courts have used these factors for determining whether a worker is an employee or independent contractor, they are not relevant for determining whether additional persons are jointly liable under the Act to a worker whose classification as an employee has already been established.

Finally, there is judicial precedent for specifically identifying factors that are not relevant to the joint employer inquiry. Notably, the Eleventh Circuit identified three factors—including the skill required and the opportunity for profit and loss—as not relevant to the joint employer inquiry.[77] The Eleventh Circuit explained that these factors ''only distinguished whether [a worker] was an employee or an independent contractor,'' not whether an additional person was a joint employer of the worker.[78] Similarly, the courts have found that the ''usefulness'' of the traditional employment relationship test—which includes factors such as the skill required, opportunity for profit or loss, and investment in the business—is ''significantly limited'' in a joint employer case where the employee already has an employer and the question is whether an additional person is jointly liable with the employer for the employee.[79]

D. Proposal To Explain That Joint Employer Status Is Determined by FLSA Section 3(d) Only, Not by Section 3(e)(1) or 3(g)

The Department proposes to explain that the textual basis for FLSA joint employer status is section 3(d), not section 3(e)(1) or 3(g). While the FLSA does not use the term ''joint employer,'' the FLSA contemplates joint liability in section 3(d). First, the FLSA defines the term ''employee'' in section 3(e)(1) to mean ''any individual *employed* by an employer.'' [80] The FLSA, in turn, defines the term ''employ'' in section 3(g): '' '[e]mploy' includes to suffer or permit to work.'' [81] Reading 3(e)(1) and 3(g) together, an employer is a person who suffers, permits, or otherwise employs an individual to work, and an employee is an individual whom another person suffers, permits, or otherwise employs to work. The FLSA further defines ''employer'' in section 3(d) to ''include[ ]'' joint employers—''any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [82]

Sections 3(d), 3(e)(1), and 3(g) therefore work in harmony. If an employer suffers, permits, or otherwise employs an employee to work under 3(e)(1) and 3(g), and another person is acting directly or indirectly in the interest of the employer in relation to the employee under 3(d), then the employer and the other person are jointly and severally liable for the employee's hours worked. During that period, the employer is liable for the hours that it suffers, permits, or otherwise employs the employee to work, and the other person is a joint employer under 3(d), jointly and severally liable for those same hours worked.

Accordingly, 3(e)(1) and 3(g) determine whether there is an employment relationship between the potential employer and the worker for a specific set of hours worked, and 3(d) alone determines another person's joint liability for those hours worked. This delineation is confirmed by the structure of the text. A person who is, under 3(d), acting ''*in the interest of an employer* in relation to an employee'' is, by definition, a *second* employer.[83] Another person can become a joint employer of an employee under 3(d) only if an employer is already suffering, permitting, or otherwise employing that employee to work under sections 3(e)(1) and 3(g).[84] By contrast, sections 3(e)(1) and 3(g) do not expressly address the possibility of a second employment relationship. In fact, 3(e)(1) defines an ''employee'' as ''any individual *employed* by *an employer*''—singular.[85] But 3(d)'s inclusion of ''any person acting directly or indirectly in the interest of an employer in relation to an employee'' encompasses any additional persons that may be held jointly liable for the employee's hours worked in a workweek. The Department's interpretation of sections 3(d), (e)(1), and (g) is therefore consistent with the text of the Act which expands employer liability beyond the initial employment relationship to additional persons.

This clear textual delineation is consistent with judicial precedent. In *Rutherford Food,* the Supreme Court identified the FLSA's definition of ''employ'' in section 3(g) in particular when determining whether the workers

[75] 29 U.S.C. 203(d).

[76] *See id.* (''Employer'' includes any person *acting* directly or indirectly in the interest of an employer in relation to an employee . . . '' (emphasis added)).

[77] *See Layton,* 686 F.3d at 1176.

[78] *Id.*

[79] *E.g., Baystate,* 163 F.3d at 675 n.9.

[80] 29 U.S.C. 203(e)(1) (emphasis added).

[81] 29 U.S.C. 203(g).

[82] 29 U.S.C. 203(d).

[83] *Id.*

[84] *Id.* (''Employer' includes any person acting directly or indirectly *in the interest of an employer in relation to an employee* . . . . '' (emphasis added)).

[85] In contrast, the definition of ''employee'' in the NLRA expressly contemplates the existence of multiple employers. *See* 29 U.S.C. 152(3) (''The term 'employee''' shall include any employee, and shall not be limited to the employees of a particular employer . . . '').

at issue were employees or independent contractors.[86] The Court cited section 3(d) only in passing in a footnote.[87] By contrast, in *Falk* the Supreme Court relied on the FLSA's definition of ''employer'' in section 3(d) to determine joint employer status.[88] The Court in *Falk* found joint employer status under 3(d) because of the potential joint employer's exercise of control over the terms and conditions of the employee's work.[89] *Falk* did not cite 3(g).[90] In the same way, *Bonnette* determined joint employer status according to the text of 3(d) alone, without citing 3(g).[91]

Accordingly, the Department proposes to revise part 791 to better account for section 3(d), *Falk,* and *Bonnette* by explaining that joint employer status is determined by 3(d) alone—whether the potential joint employer is acting in the interest of an employer in relation to an employee. Explicitly tethering the joint employer standard in part 791 to section 3(d) will provide clearer guidance on how to determine joint employer status consistent with the text of the Act.

E. Proposal To Clarify That a Person's Business Model, Certain Business Practices, and Certain Contractual Provisions Do Not Make Joint Employer Status More or Less Likely

The Department proposes to clarify that a potential joint employer's business model does not make joint employer status more or less likely under the Act. Under the FLSA, a person is a joint employer if it is ''acting . . . in relation to'' an employee of an employer—not simply because it has a certain business model.[92] Accordingly, the mere fact that a potential joint employer enters into a franchise arrangement with an employer does not itself make that person jointly liable for the employer's employees. The potential joint employer must be acting, directly or indirectly, ''in relation to'' those employees to be jointly liable for them.[93]

The Department also proposes to clarify that certain business practices that the Department has encountered—such as providing a sample employee handbook or other forms to an employer as part of a franchise arrangement; allowing an employer to operate a facility on its premises; offering or participating in an association health or retirement plan; [94] or jointly participating with an employer in an apprenticeship program—do not make joint employer liability more or less likely under the Act. Of course, if a potential joint employer enforced the terms of a franchise handbook against a franchisee's employee, or directed an employer's employee to participate in a joint apprenticeship program, or exercised control over an employer's employee who worked on its premises, those actions ''in relation to'' the employee could indicate joint employer status. The mere business practices themselves—participating in the apprenticeship program, health plan, or retirement plan; sharing the premises; or providing the handbook—do not necessarily involve the potential joint employer ''acting . . . in relation to'' the employer's employee.

The Department also proposes to clarify that certain contractual provisions between an employer and another person—such as requiring the employer to institute workplace safety practices, a wage floor, sexual harassment policies, morality clauses,[95] or other measures to encourage compliance with the law or to promote desired business practices—do not make joint employer status more or less likely under the Act. Of course, if a potential joint employer enforced the terms of these provisions—for example, by directly firing one of the employer's employees for violating a sexual harassment policy—those actions ''in relation to'' the employee could indicate joint employer status. However, the provisions themselves merely require the employer to institute generic policies. They do not show control over any actual employment decisions. They do not involve the potential joint employer ''acting . . . in relation to'' any of the employer's employees.

F. Proposal To Replace the Phrase ''Joint Employment''

The Department also proposes to replace the phrase ''joint employment'' with ''joint employer status'' throughout part 791. This change will help to focus the inquiry on whether the potential joint employer has taken sufficient action to be held jointly and severally liable under 3(d).

G. Proposal To Reiterate That a Joint Employer Can Be Any Legal Person Under the Act

Because section 3(d) ''includes any *person* acting directly or indirectly in the interest of an employer in relation to an employee,'' [96] the Department proposes to add the Act's definition of ''person'' to part 791.[97] This addition would ensure that a joint employer under 3(d) broadly encompasses every kind of person contemplated by the Act.

H. Proposal To Make Non-Substantive Revisions to the Department's Current Joint Employer Standard in the Other Joint Employer Scenario (Separate Sets of Hours)

The Department believes that part 791's ''not completely disassociated'' standard provides clear and useful guidance in the other joint employer scenario, where multiple employers suffer, permit, or otherwise employ an employee to work separate sets of hours in the same workweek. In this scenario, employer A suffers or permits the employee to work one set of hours in a workweek—for example, 30 hours Monday through Wednesday—and employer B suffers or permits the employee to work a second set of hours in the same workweek—for example, 20 hours Thursday and Friday. If employers A and B are ''not completely disassociated'' with respect to the employee's employment, then the employee's hours worked for them in the workweek are aggregated and A and B are jointly and severally liable to the employee for 40 hours plus 10 overtime hours.

[86] *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 727–29 (1947) (''We pass . . . upon the question whether the [workers] were employees of the operator of the Kansas plant under the Fair Labor Standards Act. . . . We conclude . . . that these [workers] are not independent contractors.'').

[87] *See id.* at 728 n.6. In addition to *Rutherford,* the Court has consistently defined employment relationships under the FLSA by reference to sections 3(e)(1) and 3(g), not section 3(d). *See, e.g., Goldberg* v. *Whitaker House Coop., Inc.,* 366 U.S. 28, 31–33 (1961) (finding an employment relationship under sections 3(e) and 3(g)); *United States* v. *Rosenwasser,* 323 U.S. 360, 362–64 (1945) (relying on sections 3(e) and (g) and finding an employment relationship without citation to 3(d)).

[88] *See* 414 U.S. at 195.

[89] *See id.*

[90] *See id. Falk* mentioned 3(e)(1), but only in passing. *See id.*

[91] *See* 704 F.2d at 1469–70 (''We conclude that, under the FLSA's liberal definition of 'employer' [in 3(d)], the appellants were [joint] employers of the chore workers.'').

[92] 29 U.S.C. 203(d).

[93] *Id.*

[94] Proposing to clarify that offering or participating in an association health or retirement plan does not make joint employer status more or less likely under the FLSA does not impact the interpretation of ''employer'' under the Employee Retirement Income Security Act (ERISA) because ERISA defines ''employer'' differently than the FLSA. *See* 29 U.S.C. 1002(5) (defining ''employer'' under ERISA to mean ''any person acting . . . in relation to an employee benefit plan'' and to include ''a group or association of employers acting for an employer in such capacity'').

[95] Morality clauses require employees to maintain standards of behavior to protect the reputation of their employer. *See, e.g., Galaviz* v. *Post-Newsweek Stations,* 380 F. App'x 457, 459 (5th Cir. 2010), and *Bernsen* v. *Innovative Legal Marketing, LLC,* No. 2:11CV546, 2012 WL 3525612 (E.D. Va. Jun. 20, 2012), for examples of morality clauses.

[96] 29 U.S.C. 203(d) (emphasis added).

[97] 29 U.S.C. 203(a).

Under part 791, employers A and B will generally be considered to be sufficiently associated if: (1) There is an arrangement between them to share the employee's services; (2) one employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or (3) they share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer. The second of these three situations is simply a restatement of the statutory basis for joint liability in section 3(d), and the first and third situations—sharing an employee and exercising common control over that employee—involve the employers acting in each other's interest in relation to an employee in specific ways (establishing joint liability under 3(d)). The Department believes that this standard provides adequate clarity to determine joint employer status in this scenario, and to identify the statutory basis for that joint liability. Indeed, courts have applied the Department's current regulation in this scenario and have found it useful.[98] Additionally, the Department has issued opinion letters applying its current regulation to determine whether certain facts satisfy this joint employer scenario.[99] The Department accordingly proposes only non-substantive revisions to the current regulation with respect to this scenario.

[98] *See, e.g., Chao* v. *A-One Med. Servs., Inc.,* 346 F.3d 908, 917–18 (9th Cir. 2003) (relying on § 791.2 to find two home health care providers that shared staff, had common management, and were operated under common control of the same person to be joint employers); *Murphy* v. *Heartshare Human Servs. of New York,* 254 F.Supp.3d 392, 399–404 (E.D.N.Y. 2017) (relying on § 791.2 to hold that former employees pled with sufficient particularity that a school and a residence house were joint employers for separate hours worked because they coordinated the employees' work assignments, some of the employees' duties benefitted both, and they had overlapping management and human resources functions); *Li* v. *A Perfect Day Franchise, Inc.,* 281 FRD. 373, 400–01 (N.D. Cal. 2012) (relying on the ''common control'' provision in § 791.2 to find joint employer status); *Chao* v. *Barbeque Ventures, LLC,* No. 8:06CV676, 2007 WL 5971772, at *6 (D. Neb. Dec. 12, 2007) (relying on section 3(d), § 791.2, and *Falk* to find that separate restaurants that shared owners and had the same managers controlling both restaurants were joint employers).

[99] *See, e.g.,* Wage & Hour Div., Opinion Letter FLSA 2005–17NA, 2005 WL 6219105 (June 14, 2005) (applying § 791.2 to determine that separate health care facilities were joint employers and employees' hours worked for different facilities must be aggregated in a workweek to calculate whether overtime pay is due); Wage & Hour Division Opinion Letter 1998 WL 1147714 (Jul. 13, 1998) (applying § 791.2 to determine that separate health care entities were joint employers and employees' hours worked for different entities must be aggregated in a workweek for purposes of calculating any overtime pay due under the Act).

I. Joint Employer Examples

The Department proposes to include several illustrative examples applying the Department's proposed analysis to determine joint employer status. The Department's proposed conclusions following each example are, like all illustrative examples, limited to substantially similar factual situations.

J. Severability

Finally, the Department proposes to include a severability provision in part 791 so that, if one or more of the provisions of part 791 is held invalid or stayed pending further agency action, the remaining provisions would remain effective and operative. The Department proposes to add this provision as § 791.3.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. This NPRM does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act. The Department welcomes comments on this determination.

V. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of a regulation and to adopt a regulation only upon a reasoned determination that the regulation's net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) justify its costs. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is a ''significant regulatory action,'' which includes an action that has an annual effect of $100 million or more on the economy. Significant regulatory actions are subject to review by OMB. As described below, this proposed rule is economically significant. Therefore, the Department has prepared a preliminary Regulatory Impact Analysis (RIA) in connection with this NPRM as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule.

By simplifying the standard for determining joint employer status, this proposed rule would reduce the burden on the public. This proposed rule is accordingly expected to be an Executive Order 13771 deregulatory action.[100]

A. Introduction

1. Background

The Fair Labor Standards Act (FLSA) requires a covered employer to pay its nonexempt employees at least the federal minimum wage for every hour worked and overtime premium pay of at least 1.5-times their regular rate of pay for all hours worked in excess of 40 in a workweek. The FLSA defines an ''employer'' to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' These persons are ''joint'' employers who are jointly and severally liable with the employer for every hour worked by the employee in a workweek. 29 CFR part 791 contains the Department's official interpretation of joint employer status under the FLSA. In this NPRM, the Department proposes to revise part 791 to adopt a four-factor balancing test to determine joint employer status in one of the joint employer scenarios under the Act—where an employer suffers, permits, or otherwise employs an employee to work, and another person simultaneously benefits from that work. This proposed rule would explain what additional factors should and should not be considered, and provide guidance on how to apply this multi-factor test. The Department proposes no substantive changes to part 791's guidance in the other joint employer scenario—where multiple employers suffer, permit, or otherwise employ an employee to work separate sets of hours in the same workweek. The Department believes that its proposals would make it easier to determine whether a person is or is not a joint employer under the Act, thereby promoting compliance with the FLSA.

2. Need for Rulemaking

For the reasons explained above, the Department has determined that its interpretation of joint employer status requires revision as it applies to the first joint employer scenario identified above

[100] 82 FR 9339 (Feb. 3, 2017).

(one set of hours worked in a workweek). The Department is concerned that the current regulation does not adequately address this scenario, and believes that its proposed revisions would provide needed clarity in this scenario. The Department also believes a proposed rule:

- Could help bring clarity to the current judicial landscape, where different courts are applying different joint employer tests that have resulted in inconsistent treatment of similar worker situations, uncertainty for organizations, and increased compliance and litigation costs;
- Would reduce the chill on organizations who may be hesitant to enter into certain relationships or engage in certain kinds of business practices for fear of being held liable for counterparty employees over which they have insignificant control;
- Would better ground the Department's interpretation of joint employer status in the text of the FLSA; and
- Would be responsive to the current public and Congressional interest in the joint employer issue.

The Department believes that the current regulation provides clear and useful guidance to determine joint employer status in the second scenario, but that non-substantive revisions to better reflect the Department's longstanding practice would be desirable.

B. Economic Impacts

The Department estimated the number of affected firms and quantified the costs associated with this proposed rule. The Department expects that all businesses and state and local government entities would need to review the text of this rule, and therefore would incur regulatory familiarization costs. However, on a per-entity basis, these costs would be small (see Section V.2 for detailed analysis of regulatory familiarization costs). Because this rule does not alter the standard for determining joint employer status in the second joint employer scenario where the employee works separate sets of hours for multiple employers in the same workweek, the Department believes that there would be no change in the aggregation of workers' hours to determine overtime hours worked.[101] Therefore, there would be no impact on workers in the form of lost overtime, and no transfers between employers and employees. Although this rule would alter the standard for determining joint employer status where the employee works one set of hours in a workweek that simultaneously benefits another person, the Department believes that there would still be no impact on workers' wages due under the FLSA. This proposed standard would not change the amount of wages the employee is due under the FLSA, but could reduce, in some cases, the number of persons who are liable for payment of those wages. To the extent this proposal provides a clearer standard for determining joint employer status where the employee works one set of hours for his or her employer that simultaneously benefits another person, this rule may make it easier to determine who is liable for earned wages.

1. Costs

Updating the rules interpreting joint employer status will impose direct costs on private businesses and state and local government entities by requiring them to review the new regulation. To estimate these regulatory familiarization costs, the Department must determine: (1) The number of potentially affected entities, (2) the average hourly wage rate of the employees reviewing the regulation, and (3) the amount of time required to review the regulation.

It is uncertain whether private entities will incur regulatory familiarization costs at the firm or the establishment level. For example, in smaller businesses there might be just one specialist reviewing the regulation. Larger businesses might review the rule at corporate headquarters and determine policy for all establishments owned by the business, while more decentralized businesses might assign a separate specialist to the task in each of their establishments. To avoid underestimating the costs of this rule, the Department uses both the number of establishments and the number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the regulation, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this NPRM was drafted are from the 2016 Statistics of U.S. Businesses (SUSB), which reports 6.1 million private firms and 7.8 million private establishments with paid employees.[102] Additionally, the Department estimates 90,106 state and local governments (2012 Census of Governments) might incur costs under the proposal.[103]

The Department believes that even entities that do not currently have workers with one or more joint employers will incur regulatory familiarization costs, because they will need to confirm whether this proposed rule includes any provisions that may affect them or their employees.

The Department judges one hour per entity, on average, to be an appropriate review time for the rule. The relevant statutory definitions have been in the FLSA since its enactment in 1938, the Department has recognized the concept of joint employer status since at least 1939, and the Department already issued a rule interpreting joint employer status in 1958. Therefore, the Department expects that the standards applied by this proposed rule should be at least partially familiar to the specialists tasked with reviewing it. Additionally, the Department believes many entities are not joint employers and thus would spend significantly less than one hour reviewing the rule. Therefore, the one-hour review time represents an average of less than one hour per entity for the majority of entities that are not joint employers, and more than one hour for review by entities that might be joint employers. The Department welcomes comments on the estimate of one hour of review time per entity, and data on the amount of time typically spent by small businesses in regulatory review.

The Department's analysis assumes that the proposed rule would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The mean hourly wage for these workers is $32.29 per hour.[104] In addition, the Department also assumes that benefits are paid at a rate of 46 percent [105] and overhead costs are

[101] In this scenario, the employee's separate sets of hours are aggregated so that both employers are jointly and severally liable for the total hours the employee works in the workweek. As such, a finding of joint liability in this situation can result in some hours qualifying for an overtime premium. For example, if the employee works for employer A for 40 hours in the workweek, and for employer B for 10 hours in the same workweek, and those employers are found to be joint employers, A and B are jointly and severally liable to the employee for 50 hours worked—which includes 10 overtime hours.

[102] Statistics of U.S. Businesses 2016, *https://www.census.gov/programs-surveys/susb.html.*

[103] 2012 Census of Governments: Government Organization Summary Report, *http://www2.census.gov/govs/cog/g12_org.pdf.*

[104] Occupational Employment and Wages, May 2017, *https://www.bls.gov/oes/2017/may/oes131141.htm.*

[105] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

paid at a rate of 17 percent of the base wage, resulting in an hourly rate of $52.63.

wage, resulting in an hourly rate of $52.63.

TABLE 1—TOTAL REGULATORY FAMILIARIZATION COSTS, CALCULATION BY NUMBER OF FIRMS AND ESTABLISHMENTS ($1000S)

NAICS sector	By firm		By establishment	
	Firms	Cost [a]	Establishments	Cost [a]
Agriculture, Forestry, Fishing and Hunting	21,830	$1,149	22,594	$1,189
Mining, Quarrying, and Oil/Gas Extraction	20,309	1,069	27,234	1,433
Utilities	5,893	310	18,159	956
Construction	683,352	35,967	696,733	36,671
Manufacturing	249,962	13,156	291,543	15,345
Wholesale Trade	303,155	15,956	412,526	21,712
Retail Trade	650,997	34,264	1,069,096	56,269
Transportation and Warehousing	181,459	9,551	230,994	12,158
Information	75,766	3,988	146,407	7,706
Finance and Insurance	237,973	12,525	476,985	25,105
Real Estate and Rental and Leasing	300,058	15,793	390,500	20,553
Professional, Scientific, and Technical Serv	805,745	42,409	903,534	47,555
Management of Companies and Enterprises	27,184	1,431	55,384	2,915
Administrative and Support Services	340,893	17,942	409,518	21,554
Educational Services	91,774	4,830	103,364	5,440
Health Care and Social Assistance	661,643	34,824	890,519	46,870
Arts, Entertainment, and Recreation	126,247	6,645	137,210	7,222
Accommodation and Food Services	527,632	27,771	703,528	37,029
Other Services (except Public Admin.)	690,329	36,334	754,229	39,697
State and Local Governments	90,106	4,743	90,106	4,743
All Industries	6,092,307	320,655	7,830,163	412,123
Average Annualized Costs, 7 Percent Discount Rate				
Over 10 years		42,667		54,838
In perpetuity		20,977		26,961
Average Annualized Costs, 3 Percent Discount Rate				
Over 10 years		36,496		46,906
In perpetuity		9,339		12,004

[a] Each entity is expected to allocate one hour of Compensation, Benefits, and Job Analysis Specialists' (SOC 13–1141) time for regulatory familiarization. The unloaded hourly rate for this occupation is $32.29, and the wage load factor is 1.63 (0.46 for benefits and 0.17 for overhead). Therefore, the per-entity cost is $52.63.

The Department estimates that the lower bound of regulatory familiarization cost range would be $320.7 million, and the upper bound, $412.1 million. Additionally, the Department estimates that the Retail Trade industry would have the highest upper bound ($56.3 million), while the Professional, Scientific and Technical Services industry would have the highest lower bound ($42.4 million). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of this rule over 10 years and in perpetuity. Over 10 years, this rule would have an average annual cost of $42.7 million to $54.8 million, calculated at a 7 percent discount rate ($36.5 million to $46.9 million calculated at a 3 percent discount rate). In perpetuity, this rule would have an average annual cost of $21.0 million to $27.0 million, calculated at a 7 percent discount rate ($9.3 million to $12.0 million calculated at a 3 percent discount rate).

2. Potential Transfers

There are two joint employer scenarios under the FLSA: (1) Employees work one set of hours that simultaneously benefit the employer and another person, and (2) employees work separate sets of hours for multiple employers. The Department does not expect this rule to generate transfers to or from workers that currently have one or more joint employers under either of these scenarios.

Employees who work one set of hours for an employer that simultaneously benefit another person are not likely to see a change in the wages owed them under the FLSA as a result of this rule. In this scenario, the employee's employer is liable to the employee for all wages due under the Act for the hours worked. If a joint employer exists, then that person is jointly and severally liable with the employer for all wages due under the Act for those hours worked. To the extent that the proposed standard for determining joint employer status reduces the number of persons who are joint employers in this scenario, neither the wages due the employee under the Act nor the employer's liability for the entire wages due would change. If the person is no longer a joint employer as a result of the proposal, the employee would no longer have a legal right to collect the wages due under the Act from that person but would still be able to collect the entire wages due from the employer. In sum, changing the standard for determining whether a person is a joint employer in this scenario would not impact the wages due the employee under the Act, and assuming that all employers always fulfill their legal obligations under the Act, would not result in any reduction

in wages received by the employee because the employer would pay the wages in full. The Department recognizes that there could be a transfer between the employer and any joint employers, but lacks information about how many individuals or entities would be affected and to what degree.

Employees who work separate sets of hours for multiple employers are not affected because the Department is not proposing any substantive revisions to the standard for determining joint employer status in this scenario. Therefore, no joint liability (or lack thereof) in this scenario will be altered by the promulgation of this rule.

3. Other Potential Impacts

To the extent revising the Department's regulation provides more clarity, the revision could promote innovation and certainty in business relationships, which also benefits employees. The modern economy involves a web of complex interactions filled with a variety of unique business organizations and contractual relationships. When an employer contemplates a business relationship with another person, the other person may not be able to assess what degree of association with the employer will result in joint and several liability for the employer's employees. Indeed, the other person may be concerned with such liability despite having insignificant control over the employer's employee. This uncertainty could impact the other person's willingness to engage in any number of business practices vis-à-vis the employer—such as providing a sample employee handbook, or other forms, to the employer as part of a franchise arrangement; allowing the employer to operate a facility on its premises; using or establishing an association health plan or association retirement plan used by the employer; or jointly participating with an employer in an apprenticeship program—even though these business practices could benefit the employer's employees. Similarly, uncertainty regarding joint liability could also impact that person's willingness to bargain for certain contractual provisions with the employer, such as requiring workplace safety practices, a wage floor, sexual harassment policies, morality clauses, or other measures intended to encourage compliance with the law or to promote other desired business practices. The Department's proposal may provide additional certainty as businesses consider whether to adopt such business practices.

The Department expects that this proposed rule would reduce burdens on organizations. After initial rule familiarization, this proposal may reduce the time spent by organizations to determine whether they are joint employers. Likewise, clarity may reduce FLSA-related litigation regarding joint employer status, and reduce litigation among organizations regarding allocation of FLSA-related liability and damages. The rule may also promote greater uniformity among court decisions, providing clarity for organizations operating in multiple jurisdictions. This uniformity could reduce organizations' costs because they would not have to consider multiple, jurisdiction-specific legal standards before entering into economic relationships.

Because the Department does not have data on the number of joint employers, and the number of joint employer situations that could be affected, cost-savings attributable to this proposed rule have not been quantified. The Department requests comments, studies, and data on the prevalence of joint employers, how this proposed rule would affect members of the public, and how to quantify those impacts, if such quantification is possible. The Department also requests comments and data on any additional potential benefits of this proposed rule.

VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires that an agency prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. The agency is also required to respond to public comment on the NPRM. The Chief Counsel for Advocacy of the Small Business Administration was notified of this proposed rule upon submission of the rule to OMB under Executive Order 12866. The Department invites commenters to provide input on data analysis and/or methodology used throughout this IRFA.

A. Reasons Why Action by the Agency Is Being Considered

The Department has determined that its interpretation of joint employer status requires revision as it applies to one of the joint employer scenarios under the Act (one set of hours worked for an employer that simultaneously benefits another person). The Department is concerned that the current regulation does not adequately address this scenario, and the Department believes that its proposed revisions would provide needed clarity and ensure consistency with the Act's text.

B. Statement of Objectives and Legal Basis for the Proposed Rule

29 CFR part 791 contains the Department's official interpretations for determining joint employer status under the FLSA. It is intended to serve as a practical guide to employers and employees as to how the Department will look to apply it. However, the Department has not meaningfully revised this part since its promulgation in 1958, over 60 years ago.

The Department's objective is to update its joint employer rule in 29 CFR part 791 to provide guidance for determining joint employer status in one of the joint employer scenarios under the Act (one set of hours worked for an employer that simultaneously benefits another person) in a manner that is clear and consistent with section 3(d) of the Act.

C. Description of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by SBA, in effect as of October 1, 2017, to classify entities as small. SBA establishes separate standards for 6-digit NAICS industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. For example, small businesses are generally defined as having fewer than 500, 1,000, or 1,250 employees in manufacturing industries and less than $7.5 million in average annual receipts for nonmanufacturing industries. However, some exceptions do exist, the most notable being that depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets (small defined as less than $550 million in assets). Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.

The Department obtained data from several sources to determine the number

of small entities. However, the Statistics of U.S. Businesses (SUSB, 2012) was used for most industries (the 2012 data is the most recent SUSB data that includes information on receipts). Industries for which the Department used alternative sources include credit unions,[106] commercial banks and savings institutions,[107] agriculture,[108] and public administration.[109] The Department used the latest available data in each case, so data years differ between sources.

For each industry, the SUSB data tabulates total establishment and firm counts by both enterprise employment size (*e.g.,* 0–4 employees, 5–9 employees) and receipt size (*e.g.,* less than $100,000, $100,000–$499,999).[110] The Department combined these categories with the SBA size standards to estimate the proportion of establishments and firms in each industry that are considered small. The general methodological approach was to classify all establishments or firms in categories below the SBA cutoff as a ''small entity.'' If a cutoff fell in the middle of a defined category, the Department assumed a uniform distribution of employees across that bracket to determine what proportion should be classified as small. The Department assumed that the small entity share of credit card issuing and other depository credit intermediation institutions (which were not separately represented in FDIC asset data), is similar to that of commercial banking and savings institutions.

D. Costs for Small Entities Affected by the Proposed Rule

Table 2 presents the estimated number of small entities affected by the proposed rule. Based on the methodology described above, the Department found that 5.9 million of the 6.1 million firms (99 percent) and 6.3 million of the 7.8 million establishments (81 percent) qualify as small by SBA standards. As discussed in Section V.B, these do not exclude entities that currently do not have joint employees, as those will still need to familiarize themselves with the text of the new rule. Moreover, we assume that the cost structure of regulatory familiarization will not differ between small and large entities (*i.e.,* small entities will need the same amount of time for review and will assign the same type of specialist to the task).

TABLE 2—REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AVERAGE BY FIRM AND ESTABLISHMENT ($1000S)

NAICS sector	By firm			By establishment		
	Firms	Percent of total	Cost per firm [a]	Establishments	Percent of total	Cost per estab [a]
Agric./Forestry/Fishing/Hunting	18,307	83.9	$53	18,930	83.8	$53
Mining/Quarrying/Oil & Gas Extraction	19,625	96.6	53	21,974	80.7	53
Utilities	5,487	93.1	53	7,762	42.7	53
Construction	673,521	98.6	53	676,913	97.2	53
Manufacturing	241,932	96.8	53	264,112	90.6	53
Wholesale Trade	292,615	96.5	53	328,327	79.6	53
Retail Trade	636,069	97.7	53	688,835	64.4	53
Transportation & Warehousing	174,523	96.2	53	183,810	79.6	53
Information	73,288	96.7	53	83,559	57.1	53
Finance and Insurance	229,002	96.2	53	269,991	56.6	53
Real Estate & Rental & Leasing	293,693	97.9	53	310,740	79.6	53
Prof., Scientific, & Technical Services	790,834	98.1	53	819,115	90.7	53
Management of Companies & Ent	18,004	66.2	53	34,124	61.6	53
Administrative & Support Services	332,072	97.4	53	347,167	84.8	53
Educational Services	87,566	95.4	53	90,559	87.6	53
Health Care & Social Assistance	638,699	96.5	53	726,524	81.6	53
Arts, Entertainment, & Recreation	123,530	97.8	53	126,281	92.0	53
Accommodation & Food Services	520,690	98.7	53	556,588	79.1	53
Other Services	681,696	98.7	53	700,496	92.9	53
State & Local Governments [b]	72,844	80.8	53	72,844	80.8	53
All Industries	5,923,996	97.2	53	6,328,653	80.8	53
Average Annualized Costs, 7 Percent Discount Rate						
Over 10 years			7			7
In perpetuity			3			3
Average Annualized Costs, 3 Percent Discount Rate						
Over 10 years			6			6
In perpetuity			2			2

[a] Each entity is expected to allocate one hour of Compensation, Benefits, and Job Analysis Specialists' (SOC 13–1141) time for regulatory familiarization. The unloaded hourly rate for this occupation is $32.29, and the wage load factor is 1.63 (0.46 for benefits and 0.17 for overhead). Therefore, the per-entity cost is $52.63.

[b] Government entities are not classified as firms or establishments; therefore, we use the total number of entities for both calculations.

[106] Nat'l Credit Union Ass'n. (2012). 2012 Year End Statistics for Federally Insured Credit Unions, *https://www.ncua.gov/analysis/Pages/call-report-data/reports/chart-pack/chart-pack-2018-q1.pdf.*

[107] Fed. Depository Ins. Corp. (2018). Statistics on Depository Institutions—Compare Banks. Available at: *https://www5.fdic.gov/SDI/index.asp.* Data are from 3/31/18. Data is from 3/11/2018 for employment, and data is from 6/30/2017 for the share of firms and establishments that are ''small''.

[108] U.S. Dep't of Agric. (2014). 2012 Census of Agriculture: United States Summary and State Data: Volume 1, Geographic Area Series, Part 51. Available at: *http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[109] Hogue, C. (2012). Government Organization Summary Report: 2012. Available at: *http://www2.census.gov/govs/cog/g12_org.pdf.*

[110] The SUSB defines employment as of the week of March 12th of the particular year for which it is published.

The Department estimates that in Year 1, small entities will incur a minimum of approximately $312 million in total regulatory familiarization costs, and a maximum of approximately $333 million. Professional, Scientific, and Technical Services is the industry that will incur the highest total costs ($41.6 million to $43.1 million).

Additionally, the Department estimated average annualized costs to small entities of this rule over 10 years and in perpetuity. Over 10 years, this rule will have an average annual cost of $41.5 million to $44.3 million, calculated at a 7 percent discount rate ($35.5 million to $37.9 million calculated at a 3 percent discount rate). In perpetuity, this rule will have an average annual cost of $20.4 million to $21.8 million, calculated at a 7 percent discount rate ($9.1 million to $9.7 million calculated at a 3 percent discount rate).

Based on the analysis above, the Department does not expect that small entities will incur large individual costs as a result of this rule. Even though all entities will incur familiarization costs, these costs will be relatively small on a per-entity basis (an average of $52.63 per entity). Furthermore, no costs will be incurred past the first year of the promulgation of this rule. As a share of revenues, costs do not exceed 0.003 percent on average for all industries (Table 3). The industry where costs are the highest percent of revenues is Management of Companies and Enterprises where costs range from a lower bound of 0.015 percent to an upper bound of 0.028 percent of revenues. Additionally, the Department calculated the revenue per firm/establishment for entities with 0 to 4 employees, as per SUSB data. The industry that has had the smallest revenue per entity is Accommodation and Food Services (NAICS 72)—$221,600 per firm and $221,100 per establishment, in 2017 dollars. In both cases, the per-entity cost ($53) is approximately 0.024% of revenue. Accordingly, the Department does not expect that the proposed rule would have a significant economic cost impact on a substantial number of small entities.

TABLE 3—TOTAL REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AS SHARE OF REVENUES

NAICS sector	Total revenue for small entities (millions) [a]	Cost as percent of revenue [c]	
		By firms	By establishments
Agriculture, Forestry, Fishing & Hunting	$21,978	0.004	0.005
Mining, Quarrying, & Oil/Gas Extraction	183,236	0.001	0.001
Utilities	124,928	0.000	0.000
Construction	754,055	0.005	0.005
Manufacturing	1,836,516	0.001	0.001
Wholesale Trade	2,584,835	0.001	0.001
Retail Trade	1,419,180	0.002	0.003
Transportation & Warehousing	235,647	0.004	0.004
Information	198,347	0.002	0.002
Finance & Insurance	260,753	0.005	0.005
Real Estate & Rental & Leasing	195,889	0.008	0.008
Professional, Scientific, & Technical Services	636,424	0.007	0.007
Management of Companies & Enterprises	6,492	0.015	0.028
Administrative & Support Services	259,794	0.007	0.007
Educational Services	79,796	0.006	0.006
Health Care & Social Assistance	628,701	0.005	0.006
Arts, Entertainment, & Recreation	92,957	0.007	0.007
Accommodation & Food Services	367,996	0.007	0.008
Other Services (except Public Administration)	368,806	0.010	0.010
State & Local Governments	[b]	[b]	[b]
All Industries	10,256,328	0.003	0.003

[a] Inflated to 2017 dollars using the GDP deflator.

[b] Government entities are considered small if the relevant population is less than 50,000. Government revenue data are not readily available by size of government entity.

[c] Calculated by dividing total revenues per industry by total costs per industry, by firm and by establishment, as shown in Table 2.

E. Analysis of Regulatory Alternatives

In developing this NPRM, the Department considered proposing alternative tests for the first joint employer scenario—where an employee works one set of hours that simultaneously benefits another person. Those alternative tests, such as the Second and Fourth Circuits' joint employer tests, have more factors than the Department's proposed test, may have a second step, and rely substantially on the ''suffer or permit'' language in FLSA section 3(g).[111] The Department, however, believes that section 3(d), not section 3(g), is the touchstone for joint employer status and that its proposed four-factor balancing test is preferable, in part because it is consistent with section 3(d). The Department's proposed test is simpler and easier to apply because it has fewer factors and only one step, whereas the alternative tests involve a consideration of additional factors and are therefore more complex and indeterminate.

The Department also considered applying the four-factor balancing test in *Bonnette* without modification. The Department instead proposes a four-factor test that closely tracks the language of *Bonnette* with a modification to the first factor. Whereas the *Bonnette* test considers whether the potential joint employer had the ''power'' to hire and fire, the Department proposes a test that considers whether the employer actually exercised the power to hire and fire. The Department believes that this modification will help ensure that its joint employer test is fully consistent

[111] *See Zheng,* 355 F.3d at 69; *Salinas,* 848 F.3d at 136.

with the text of section 3(d), which requires a potential joint employer to be ''acting . . . in relation to an employee.'' [112] By rooting the joint employer standard in the text of the statute, the Department believes that its proposal could provide workers and organizations with more clarity in determining who is a joint employer under the Act, thereby promoting innovation and certainty in businesses relationships.

VIII. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (UMRA) [113] requires agencies to prepare a written statement for rules for which a general notice of proposed rulemaking was published and that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $161 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This proposed rule is issued pursuant to the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.*

B. Assessment of Quantified [114] Costs and Benefits

For purposes of the UMRA, this rule includes a federal mandate that is expected to result in increased expenditures by the private sector of more than $161 million in at least one year, but the rule will not result in increased expenditures by state, local, and tribal governments, in the aggregate, of $161 million or more in any one year.

Based on the cost analysis from this proposed rule, the Department determined that the proposed rule will result in Year 1 total costs for state and local governments totaling $4.7 million, all of them incurred for regulatory familiarization (*see* Table 1). There will be no additional costs incurred in subsequent years.

The Department determined that the proposed rule will result in Year 1 total costs for the private sector between $315.9 million and $407.4 million, all of them incurred for regulatory familiarization. There will be no additional costs incurred in subsequent years.

UMRA requires agencies to estimate the effect of a regulation on the national economy if, at its discretion, such estimates are reasonably feasible and the effect is relevant and material.[115] However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of GDP, or in the range of $48.5 billion to $97.0 billion (using 2017 GDP). A regulation with smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's PRIA estimates that the total costs of the proposed rule will be between $320.7 million and $412.1 million (*see* Table 1). All costs will occur in the first year of the promulgation of this rule, and there will be no additional costs in subsequent years. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy.

C. Least Burdensome Option Explained

This Department believes that it has chosen the least burdensome but still cost-effective methodology to revise its rule for determining joint employer status under the FLSA consistent with the Department's statutory obligation. Although the proposed regulation would impose costs for regulatory familiarization, the Department believes that its proposal would reduce the overall burden on organizations by simplifying the standard for determining joint employer status. The Department believes that, after familiarization, this rule may reduce the time spent by organizations to determine whether they are joint employers. Additionally, revising the Department's guidance to provide more clarity could promote innovation and certainty in business relationships.

IX. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 791

Wages.

■ For the reasons set forth in the preamble, the Department proposes to revise part 791 of Title 29 of the Code of Federal Regulations as follows:

PART 791—JOINT EMPLOYER STATUS UNDER THE FAIR LABOR STANDARDS ACT

Sec

791.1 Introductory statement
791.2 Determining Joint Employer Status under the FLSA
791.3 Severability

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219; Reorganization Plan No. 6 of 1950; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527.

§ 791.1 Introductory statement.

This part contains the Department of Labor's general interpretations of the text governing joint employer status under the Fair Labor Standards Act. *See* 29 U.S.C. 201–19. The Administrator of the Wage and Hour Division intends that these interpretations will serve as ''a practical guide to employers and employees as to how [the Wage and Hour Division] will seek to apply [the Act].'' *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 138 (1944). The Administrator believes that they are correct interpretations of the law and will accordingly use them to guide the performance of his or her duties under the Act until he or she concludes upon reexamination that they are incorrect or is otherwise directed by an authoritative judicial decision. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to joint

[112] 29 U.S.C. 203(d).

[113] *See* 2 U.S.C. 1501.

[114] Only the rule familiarization cost is quantified, but the Department believes that there are potential cost savings that it could not quantify due to lack of data at this time.

[115] *See* 2 U.S.C. 1532(a)(4).

employer status under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. These interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, so long as the Department does not modify, amend, or rescind them, and judicial authority does not determine that they are incorrect.

§ 791.2 Determining Joint Employer Status under the FLSA.

There are two joint employer scenarios under the FLSA.

(a)(1) In the first joint employer scenario, the employee has an employer who suffers, permits, or otherwise employs the employee to work, *see* 29 U.S.C. 203(e)(1), (g), but another person simultaneously benefits from that work. The other person is the employee's joint employer only if that person is acting directly or indirectly in the interest of the employer in relation to the employee. *See* 29 U.S.C. 203(d). In this situation, the following four factors are relevant to the determination. Those four factors are whether the other person:

(i) Hires or fires the employee;

(ii) Supervises and controls the employee's work schedule or conditions of employment;

(iii) Determines the employee's rate and method of payment; and

(iv) Maintains the employee's employment records.

(2) The potential joint employer must actually exercise—directly or indirectly—one or more of these indicia of control to be jointly liable under the Act. *See* 29 U.S.C. 203(d). The potential joint employer's ability, power, or reserved contractual right to act in relation to the employee is not relevant for determining joint employer status. No single factor is dispositive in determining the economic reality of the potential joint employer's status under the Act. Whether a person is a joint employer under the Act will depend on all the facts in a particular case, and the appropriate weight to give each factor will vary depending on the circumstances.

(b) Additional factors may be relevant for determining joint employer status in this scenario, but only if they are indicia of whether the potential joint employer is:

(1) Exercising significant control over the terms and conditions of the employee's work; or

(2) Otherwise acting directly or indirectly in the interest of the employer in relation to the employee.

(c) Whether the employee is economically dependent on the potential joint employer is not relevant for determining the potential joint employer's liability under the Act. Accordingly, to determine joint employer status, no factors should be used to assess economic dependence. Examples of factors that are not relevant because they assess economic dependence include, but are not limited to, whether the employee:

(1) Is in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight;

(2) Has the opportunity for profit or loss based on his or her managerial skill; and

(3) Invests in equipment or materials required for work or the employment of helpers.

(d) (1) A joint employer may be an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. *See* 29 U.S.C. 203(a), (d).

(2) The potential joint employer's business model—for example, operating as a franchisor—does not make joint employer status more or less likely under the Act.

(3) The potential joint employer's contractual agreements with the employer requiring the employer to, for example, set a wage floor, institute sexual harassment policies, establish workplace safety practices, require morality clauses, adopt similar generalized business practices, or otherwise comply with the law, do not make joint employer status more or less likely under the Act.

(4) The potential joint employer's practice of providing a sample employee handbook, or other forms, to the employer; allowing the employer to operate a business on its premises (including ''store within a store'' arrangements); offering an association health plan or association retirement plan to the employer or participating in such a plan with the employer; jointly participating in an apprenticeship program with the employer; or any other similar business practice, does not make joint employer status more or less likely under the Act.

(e)(1) In the second joint employer scenario, one employer employs a worker for one set of hours in a workweek, and another employer employs the same worker for a separate set of hours in the same workweek. The jobs and the hours worked for each employer are separate, but if the employers are joint employers, both employers are jointly and severally liable for all of the hours the employee worked for them in the workweek.

(2) In this second scenario, if the employers are acting independently of each other and are disassociated with respect to the employment of the employee, each employer may disregard all work performed by the employee for the other employer in determining its own responsibilities under the Act. However, if the employers are sufficiently associated with respect to the employment of the employee, they are joint employers and must aggregate the hours worked for each for purposes of determining compliance with the Act. The employers will generally be sufficiently associated if:

(i) There is an arrangement between them to share the employee's services;

(ii) One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or

(iii) They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer. Such a determination depends on all of the facts and circumstances. Certain business relationships, for example, which have little to do with the employment of specific workers—such as sharing a vendor or being franchisees of the same franchisor—are alone insufficient to establish that two employers are sufficiently associated to be joint employers.

(f) For each workweek that a person is a joint employer of an employee, that joint employer is jointly and severally liable with the employer and any other joint employers for compliance with all of the applicable provisions of the Act, including the overtime provisions, for all of the hours worked by the employee in that workweek. In discharging this joint obligation in a particular workweek, the employer and joint employers may take credit toward minimum wage and overtime requirements for all payments made to the employee by the employer and any joint employers.

(g) The following illustrative examples demonstrate the application of the principles described in paragraphs (a)–(f) of this section under the facts presented and are limited to substantially similar factual situations:

(1)(i) *Example.* An individual works 30 hours per week as a cook at one restaurant establishment, and 15 hours per week as a cook at a different restaurant establishment affiliated with the same nationwide franchise. These establishments are locally owned and managed by different franchisees that do not coordinate in any way with respect

to the employee. Are they joint employers of the cook?

(ii) *Application.* Under these facts, the restaurant establishments are not joint employers of the cook because they are not associated in any meaningful way with respect to the cook's employment. The similarity of the cook's work at each restaurant, and the fact that both restaurants are part of the same nationwide franchise, are not relevant to the joint employer analysis, because those facts have no bearing on the question whether the restaurants are acting directly or indirectly in each other's interest in relation to the cook.

(2)(i) *Example.* An individual works 30 hours per week as a cook at one restaurant establishment, and 15 hours per week as a cook at a different restaurant establishment owned by the same person. Each week, the restaurants coordinate and set the cook's schedule of hours at each location, and the cook works interchangeably at both restaurants. The restaurants decided together to pay the cook the same hourly rate. Are they joint employers of the cook?

(ii) *Application.* Under these facts, the restaurant establishments are joint employers of the cook because they share common ownership, coordinate the cook's schedule of hours at the restaurants, and jointly decide the cook's terms and conditions of employment, such as the pay rate. Because the restaurants are sufficiently associated with respect to the cook's employment, they must aggregate the cook's hours worked across the two restaurants for purposes of complying with the Act.

(3)(i) *Example.* An office park company hires a janitorial services company to clean the office park building after-hours. According to a contractual agreement with the office park and the janitorial company, the office park agrees to pay the janitorial company a fixed fee for these services and reserves the right to supervise the janitorial employees in their performance of those cleaning services. However, office park personnel do not set the janitorial employees' pay rates or individual schedules and do not in fact supervise the workers' performance of their work in any way. Is the office park a joint employer of the janitorial employees?

(ii) *Application.* Under these facts, the office park is not a joint employer of the janitorial employees because it does not hire or fire the employees, determine their rate or method of payment, or exercise control over their conditions of employment. The office park's reserved contractual right to control the employee's conditions of employment does not demonstrate that it is a joint employer.

(4)(i) *Example.* A country club contracts with a landscaping company to maintain its golf course. The contract does not give the country club authority to hire or fire the landscaping company's employees or to supervise their work on the country club premises. However, in practice a club official oversees the work of employees of the landscaping company by sporadically assigning them tasks throughout each workweek, providing them with periodic instructions during each workday, and keeping intermittent records of their work. Moreover, at the country club's direction, the landscaping company agrees to terminate an individual worker for failure to follow the club official's instructions. Is the country club a joint employer of the landscaping employees?

(ii) *Application.* Under these facts, the country club is a joint employer of the landscaping employees because the club exercises sufficient control, both direct and indirect, over the terms and conditions of their employment. The country club directly supervises the landscaping employees' work and determines their schedules on what amounts to a regular basis. This routine control is further established by the fact that the country club indirectly fired one of landscaping employees for not following its directions.

(5)(i) *Example.* A packaging company requests workers on a daily basis from a staffing agency. The packaging company determines each worker's hourly rate of pay, supervises their work, and uses sophisticated analysis of expected customer demand to continuously adjust the number of workers it requests and the specific hours for each worker, sending workers home depending on workload. Is the packaging company a joint employer of the staffing agency's employees?

(ii) *Application.* Under these facts, the packaging company is a joint employer of the staffing agency's employees because it exercises sufficient control over their terms and conditions of employment by setting their rate of pay, supervising their work, and controlling their work schedules.

(6)(i) *Example.* An Association, whose membership is subject to certain criteria such as geography or type of business, provides optional group health coverage and an optional pension plan to its members to offer to their employees. Employer B and Employer C both meet the Association's specified criteria, become members, and provide the Association's optional group health coverage and pension plan to their respective employees. The employees of both B and C choose to opt in to the health and pension plans. Does the participation of B and C in the Association's health and pension plans make the Association a joint employer of B's and C's employees, or B and C joint employers of each other's employees?

(ii) *Application.* Under these facts, the Association is not a joint employer of B's or C's employees, and B and C are not joint employers of each other's employees. Participation in the Association's optional plans does not involve any control by the Association, direct or indirect, over B's or C's employees. And while B and C independently offer the same plans to their respective employees, there is no indication that B and C are coordinating, directly or indirectly, to control the other's employees. B and C are therefore not acting directly or indirectly in the interest of the other in relation to any employee.

(7(i)) *Example.* Entity A, a large national company, contracts with multiple other businesses in its supply chain. As a precondition of doing business with A, all contracting businesses must agree to comply with a code of conduct, which includes a minimum hourly wage higher than the federal minimum wage, as well as a promise to comply with all applicable federal, state, and local laws. Employer B contracts with A and signs the code of conduct. Does A qualify as a joint employer of B's employees?

(ii) *Application.* Under these facts, A is not a joint employer of B's employees. Entity A is not acting directly or indirectly in the interest of B in relation to B's employees—hiring, firing, maintaining records, or supervising or controlling work schedules or conditions of employment. Nor is A exercising significant control over Employer B's rate or method of pay—although A requires B to maintain a wage floor, B retains control over how and how much to pay its employees. Finally, because there is no indication that A's requirement that B commit to comply with all applicable federal, state, and local law exerts any direct or indirect control over B's employees, this requirement has no bearing on the joint employer analysis.

(8)(i) *Example.* Franchisor A is a global organization representing a hospitality brand with several thousand hotels under franchise agreements. Franchisee B owns one of these hotels and is a licensee of A's brand. In addition, A provides B with a sample employment application, a sample

employee handbook, and other forms and documents for use in operating the franchise. The licensing agreement is an industry-standard document explaining that B is solely responsible for all day-to-day operations, including hiring and firing of employees, setting the rate and method of pay, maintaining records, and supervising and controlling conditions of employment. Is A a joint employer of B's employees?

(ii) *Application.* Under these facts, A is not a joint employer of B's employees. A does not exercise direct or indirect control over B's employees. Providing samples, forms, and documents does not amount to direct or indirect control over B's employees that would establish joint liability.

(9)(i) *Example.* A retail company owns and operates a large store. The retail company contracts with a cell phone repair company, allowing the repair company to run its business operations inside the building in an open space near one of the building entrances. As part of the arrangement, the retail company requires the repair company to establish a policy of wearing specific shirts and to provide the shirts to its employees that look substantially similar to the shirts worn by employees of the retail company. Additionally, the contract requires the repair company to institute a code of conduct for its employees stating that the employees must act professionally in their interactions with all customers on the premises. Is the retail company a joint employer of the repair company's employees?

(ii) *Application.* Under these facts, the retail company is not a joint employer of the cell phone repair company's employees. The retail company's requirement that the repair company provide specific shirts to its employees and establish a policy that its employees to wear those shirts does not, on its own, demonstrate substantial control over the repair company's employees' terms and conditions of employment. Moreover, requiring the repair company to institute a code of conduct or allowing the repair company to operate on its premises does not make joint employer status more or less likely under the Act. There is no indication that the retail company hires or fires the repair company's employees, controls any other terms and conditions of their employment, determines their rate and method of payment, or maintains their employment records.

§ 791.3 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from part 791 and shall not affect the remainder thereof.

Signed at Washington, DC, this 29th day of March, 2019.

Keith E. Sonderling,

Acting Administrator, Wage and Hour Division.

[FR Doc. 2019–06500 Filed 4–8–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0203]

RIN 1625–AA08

Special Local Regulation; Upper Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish special local regulations for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters located at National Harbor, MD, during a swim event on the morning of June 23, 2019. This rule would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rule.

DATES: Comments and related material must be received by the Coast Guard on or before May 9, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0203 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 Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

Enviro-Sports Productions, Inc. of Stinson Beach, CA, notified the Coast Guard that it will be conducting the Washington DC Sharkfest Swim between 7:30 a.m. and 10:30 a.m. on June 23, 2019. The inaugural open water amateur swim race consists of approximately 250 adult and youth athletes competing on a marked trapezoid course with three designated swim distances, including 1 Km, 2 Km and 4 Km. The course starts and finishes at the end of the commercial pier at National Harbor, MD. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the swim would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Upper Potomac River.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of the Upper Potomac River before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041, which authorizes the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 7 a.m. through 11 a.m. on June 23, 2019. There is no alternate date planned for this event. The regulated area would cover all navigable waters of the Upper Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47′30.30″ N, longitude 077°01′26.70 W, thence west to latitude 38°47′30.00″

N, longitude 077°01′37.30″ W, thence south to latitude 38°47′08.20″ N, longitude 077°01′37.30″ W, thence east to latitude 38°47′09.00″ N, longitude 077°01′09.20″ W, thence southeast along the pier to latitude 38°47′06.30″ N, longitude 077°01′02.50 W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I–95/I–495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD. The regulated area is approximately 1,210 yards in length and 740 yards in width.

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the open water swim, scheduled from 7:30 a.m. to 10:30 a.m. on June 23, 2019. The COTP and the Coast Guard Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Washington DC Sharkfest Swim participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while within the regulated area. Vessels would be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels would be allowed to enter the race area.

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 size, time of day and duration of the regulated area, which would impact a small designated area of the Upper Potomac River for 4 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

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 Directive 023–01 and Commandant Instruction M16475.1D, 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for four hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0203 to read as follows:

§ 100.501T05–0203 Special Local Regulation; Upper Potomac River, National Harbor, MD.

(a) *Definitions.* As used in this section:

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Washington DC Sharkfest Swim or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

(b) *Location.* The following location is a regulated area. All navigable waters of the Upper Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47′30.30″ N, longitude 077°01′26.70 W, thence west to latitude 38°47′30.00″ N, longitude 077°01′37.30″ W, thence south to latitude 38°47′08.20″ N, longitude 077°01′37.30″ W, thence east to latitude 38°47′09.00″ N, longitude 077°01′09.20″ W, thence southeast along the pier to latitude 38°47′06.30″ N, longitude 077°01′02.50″ W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I–95/I–495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD. All coordinates reference Datum NAD 1983.

(c) *Special local regulations:* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1

MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on June 23, 2019.

Dated: April 2, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0193]

RIN 1625–AA00

Safety Zones; July 4th Holiday Fireworks in the Coast Guard Captain of the Port Maryland-National Capital Region Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish three temporary safety zones for certain waters within the Captain of the Port Maryland-National Capital Region Zone. This action is necessary to provide for the safety of life on these navigable waters of the Severn River at Sherwood Forest, MD, on July 3, 2019, (with alternate date of July 5, 2019), the Middle River in Baltimore County, MD, on July 6, 2019, (with alternate date of July 7, 2019), and the Susquehanna River at Havre de Grace, MD, on July 6, 2019, (with alternate date of July 7, 2019), during fireworks displays to commemorate the July 4th holiday. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Maryland-National Capital Region 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 9, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0193 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 Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Sherwood Forest Club, Inc., of Sherwood Forest, MD, notified the Coast Guard that it will be conducting a fireworks display on July 3, 2019, at 9:20 p.m. The private fireworks display is to be launched from the end of the Sherwood Forest Club main pier, located adjacent to the Severn River, approximately 200 yards east of Brewer Pond in Sherwood Forest, MD. In the event of inclement weather, the fireworks display will be scheduled for July 5, 2019. Hazards from the fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 150 yards of the fireworks discharge site.

The Marine Trades Association of Baltimore County, Inc. of Baltimore, MD, notified the Coast Guard that it will be conducting a fireworks display on July 6, 2019, at 9:15 p.m. The private fireworks display is to be launched from a fireworks barge located in the Middle River, approximately 300 yards southeast of Wilson Point in Baltimore County, MD. In the event of inclement weather, the fireworks display will be scheduled for July 7, 2019. Hazards from the fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 200 yards of the fireworks barge.

The 2019 Independence Day Commission of Havre de Grace, MD, notified the Coast Guard that it will be conducting a fireworks display on July 6, 2019, at 9:15 p.m. The public fireworks display is to be launched from a fireworks barge located in the Susquehanna River, approximately 300 yards southeast of Concord Point in Havre de Grace, MD. In the event of inclement weather, the fireworks display will be scheduled for July 7, 2019. Hazards from the fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in these displays would be a safety concern for anyone within 200 yards of the fireworks barge.

The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters of the Severn River within 150 yards of the fireworks discharge site, the Middle River within 200 yards of the fireworks barge, and the Susquehanna River within 200 yards of the fireworks barge before, during, and after the scheduled events. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP proposes to establish three temporary safety zones for certain waters within the Captain of the Port Maryland-National Capital Region Zone, as described in 33 CFR 3.25–15. This rule would be effective from 8:30 a.m. on July 3, 2019, through 10:30 p.m. on July 7, 2019, and would be enforced

during the times described below for each zone.

The first safety zone would be enforced from 8:30 p.m. to 10:30 p.m. on July 3, 2019, or if necessary due to inclement weather, from 8:30 p.m. to 10:30 p.m. on July 5, 2019. This zone would cover all navigable waters of the Severn River, within 150 yards of a fireworks discharge site located at the end of Sherwood Forest Club main pier in approximate position latitude 39°01′54.0″ N, longitude 076°32′41.8″ W, Sherwood Forest, MD. A ''FIREWORKS—DANGER—STAY AWAY'' sign would be posted on land adjacent to the shoreline, near the location. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:20 p.m. to 9:50 p.m. fireworks display.

The second safety zone would be enforced from 8 p.m. to 10:30 p.m. on July 6, 2019, or if necessary due to inclement weather, from 8 p.m. to 10:30 p.m. on July 7, 2019. The safety zone would cover all navigable waters of the Middle River, within 200 yards of a fireworks barge in approximate position latitude 39°18′24″ N, longitude 076°24′29″ W, located in Baltimore County, MD. A ''FIREWORKS—DANGER—STAY AWAY'' sign would be posted on the port and starboard sides of the barge on-scene near the location. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 p.m. to 9:45 p.m. fireworks display.

The third safety zone would be enforced from 8 p.m. to 10:30 p.m. on July 6, 2019, or if necessary due to inclement weather, from 8 p.m. to 10:30 p.m. on July 7, 2019. The safety zone would cover all navigable waters of the Susquehanna River, within 200 yards of a fireworks barge in approximate position latitude 39°32′19″ N, longitude 076°04′58.3″ W, located at Havre de Grace, MD. A ''FIREWORKS—DANGER—STAY AWAY'' sign would be posted on the port and starboard sides of the barge on-scene near the location. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 p.m. to 9:45 p.m. fireworks display.

Vessels or persons would be required to obtain permission from the COTP or COTP's designated representative before entering the safety zone. 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, duration, and time-of-day of the safety zones, which would impact small designated areas of the Severn River, Middle River, and Susquehanna River for a total of approximately seven enforcement-hours, during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones.

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 three safety zones that would prohibit entry within portions of the Severn River, Middle River, and Susquehanna River. The rule would be in effect between 8:30 a.m. on July 3, 2019 through 10:30 p.m. on July 7, 2019, and would be enforced for approximately seven hours over this time. 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 supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0193 to read as follows:

§ 165.T05–0193 Safety Zones; July 4th Holiday Fireworks in the Coast Guard Captain of the Port Maryland-National Capital Region Zone.

(a) *Locations.* The following areas are a safety zone. All coordinates refer to datum NAD 1983.

(1) *Safety zone 1.* All navigable waters of the Severn River, within 150 yards of a fireworks discharge site located at the end of Sherwood Forest Club main pier in approximate position latitude 39°01′54.0″ N, longitude 076°32′41.8″ W, located at Sherwood Forest, MD.

(2) *Safety zone 2.* All navigable waters of the Middle River, within 200 yards of a fireworks barge in approximate position latitude 39°18′24″ N, longitude 076°24′29″ W, located in Baltimore County, MD.

(3) *Safety zone 3.* All navigable waters of the Susquehanna River, within 200 yards of a fireworks barge in approximate position latitude 39°32′19″ N, longitude 076°04′58.3″ W, located at Havre de Grace, MD.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing any safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* These safety zones will be enforced during the periods described in paragraph (f) of this section. A ''FIREWORKS—DANGER—STAY AWAY'' sign will be posted on land adjacent to the shoreline, near the location described in paragraph (a)(1) of this section. A ''FIREWORKS—DANGER—STAY AWAY'' sign will be posted on the port and starboard sides of the barge on-scene near the locations described in paragraphs (a)(2) and (a)(3) of this section.

(f) *Enforcement periods.* (1) Paragraph (a)(1) of this section will be enforced from 8:30 p.m. to 10:30 p.m. on July 3, 2019. If necessary due to inclement weather on July 3rd, it will be enforced from 8:30 p.m. to 10:30 p.m. on July 5, 2019.

(2) Paragraph (a)(2) of this section will be enforced from 8 p.m. to 10:30 p.m.

on July 6, 2019. If necessary due to inclement weather on July 6th, it will be enforced from 8 p.m. to 10:30 p.m. on July 7, 2019.

(3) Paragraph (a)(3) of this section will be enforced from 8 p.m. to 10:30 p.m. on July 6, 2019. If necessary due to inclement weather on July 6th, it will be enforced from 8 p.m. to 10:30 p.m. on July 7, 2019.

Dated: April 2, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–06948 Filed 4–8–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0766; FRL–9991–85–Region 10]

Air Plan Approval; Idaho: Infrastructure Requirements for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act requires each State to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve the Idaho State Implementation Plan (SIP), submitted on September 27, 2018, as meeting infrastructure requirements for the 2015 ozone NAAQS.

DATES: Comments must be received on or before May 9, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0766, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matthew Jentgen at (206) 553–0340, or *jentgen.matthew@epa.gov.*

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

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I. Background

On October 26, 2015 (80 FR 65292) the EPA published a rule revising the 8-hour ozone NAAQS from 0.075 parts per million (ppm) to a new, more protective level of 0.070 ppm. After a new or revised standard is promulgated, the Clean Air Act (CAA) requires each State to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as an infrastructure SIP. On September 27, 2018, the Idaho Department of Environmental Quality (IDEQ) submitted a SIP revision to meet the 2015 ozone NAAQS infrastructure requirements.[1]

II. Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that each State must meet related to a newly established or revised NAAQS. The EPA has issued guidance to help States address these requirements, most recently on September 13, 2013, (2013 Guidance).[2] As noted in the 2013 Guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, States may certify that fact in their submissions to the EPA. The requirements, with corresponding CAA subsections, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. EPA Approach To Review of Infrastructure SIP Submissions

The EPA's 2013 Guidance restated our interpretation that two elements are not governed by the three-year submission deadline in CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on separate schedules, pursuant to CAA section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C), to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) CAA section 110(a)(2)(I). As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). The EPA has also determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to

[1] The September 27, 2018, submission also addressed all interstate transport requirements at CAA section 110(a)(2)(D) for the 2015 ozone NAAQS. However, this publication proposes action on only a portion of those requirements, specifically CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii). We intend to address the remainder of the interstate transport requirements in a separate, future action. *See* section 110(a)(2)(D) below.

[2] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013 (available at *https://www.epa.gov/air-quality-implementation-plans/infrastructure-sip-requirements-and-guidance*).

interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions in the 2013 Guidance and through regional actions on infrastructure submissions.[3] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting State's SIP for facial compliance with statutory and regulatory requirements, not for the State's implementation of its SIP.[4] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. EPA Evaluation

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submission: The submission cites an overview of the Idaho air quality laws and regulations, including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules for the Control of Air Pollution located at IDAPA 58.01.01. Relevant laws cited include Idaho Code Section 39–105(3)(d) which provides Idaho DEQ authority to supervise and administer a system to safeguard air quality, Idaho Code Section 39–115 which provides Idaho DEQ with specific authority for the issuance of air quality permits, and Idaho Code Section 39–116 which provides Idaho DEQ authority to establish compliance schedules for air quality regulatory standards. Relevant regulations include IDAPA 58.01.01.107.03 (incorporation by reference of federal regulations), IDAPA 58.01.01.200–228 (permit to construct rules), IDAPA 58.01.01.400–410 (operating permit rules), IDAPA 58.01.01.600–624 (control of open burning), IDAPA 58.01.01.625 (visible emissions requirements and testing), IDAPA 58.01.01.725 (rules for sulfur content of fuels), and IDAPA 58.01.01.460–461 (banking of emissions).

EPA analysis: The State regulations identified above were previously approved by the EPA into the Idaho SIP and demonstrate that the Idaho SIP includes enforceable emission limits and other control measures to implement the 2015 ozone NAAQS. We recently approved updates to the IDAPA regulations to account for the 2015 ozone NAAQS (83 FR 42033, August 20, 2018). Idaho has no areas designated nonattainment for the 2015 ozone NAAQS. We note, as stated earlier, that the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Idaho regulates emissions of ozone precursors through, among other things, its SIP-approved new source review (NSR) permitting program. The EPA most recently approved revisions to Idaho's major and minor NSR permitting programs on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's NSR rules incorporate by reference the Federal nonattainment NSR regulations and Federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. In addition to NSR permitting regulations, Idaho's Tier II operating permit regulations at IDAPA 58.01.01.400–410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides that Idaho DEQ will require a Tier II source operating permit if Idaho DEQ determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to permitting provisions, Idaho's SIP contains rules that limit emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) as precursors to ozone formation. These rules include requirements to reduce pollutants that reduce visibility and contribute to regional haze (IDAPA 58.01.01.665–668) and emission limits for hot mix asphalt plants (IDAPA 58.01.01.805–808) and other industries. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submission: The submission references IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50 National Primary and Secondary Air Quality Standards, 40 CFR part 52 Approval and Promulgation of Implementation Plans, 40 CFR part 53 Ambient Air Monitoring Reference and Equivalent Methods, and 40 CFR part 58 Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. The Idaho submission certifies that under these rules Idaho meets the infrastructure requirement to implement ambient air monitoring surveillance systems in accordance with the requirements of the CAA.

The Idaho submission references the 2017 Idaho Annual Ambient Air Monitoring Network Plan, approved by the EPA on November 8, 2017. The Idaho submission also references the website where the Idaho DEQ provides the network plan, air quality monitoring summaries, a map of the monitoring network and real-time air monitoring data.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including ozone monitoring. Idaho's SIP-approved regulations in IDAPA 58.01.01.200—228 (permit to construct rules) and IDAPA 58.01.01.400–410 (operating permit rules) govern source-specific monitoring and emissions testing for ozone precursors in accordance with federal reference methods. Idaho regularly assesses the adequacy of the state monitoring network and submits that assessment to the EPA for review. In practice, Idaho operates a comprehensive monitoring network,

[3] The EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Guidance, as well as in numerous agency actions, including the EPA's prior action on Idaho's infrastructure SIP submission to address the 2010 nitrogen dioxide and 2010 sulfur dioxide NAAQS (August 11, 2014, 79 FR 46707). Please see our associated April 17, 2014, proposed rule for this discussion (79 FR 21669, at page 21670).

[4] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (Aug. 30, 2018).

including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires each State to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submission: The submission refers to Idaho Code Section 39–108 which provides Idaho DEQ with both administrative and civil enforcement authority with respect to the Idaho EPHA, or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submission also refers to laws and regulations related to air quality permits at IDAPA 58.01.01.200–228 (permit to construct rules).

The submission also cites the annual incorporation by reference (IBR) rulemaking which updates Idaho's SIP to include Federal changes to the NAAQS and PSD program. Idaho's submission certifies that the annual IBR updates along with IDAPA sections 200–228 (permit to construct rules) and 575–587 (air quality standards and area classification) meets the CAA infrastructure requirement to implement the PSD program.

EPA analysis: With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Idaho provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an administrative enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2015 ozone NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a State is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS. Idaho's SIP-approved PSD program is codified in IDAPA 58.01.01.200–228 (permits to construct) and governed by IDAPA 58.01.01.205 (permit requirements for new major facilities or major modifications in attainment or unclassifiable areas). We most recently approved revisions to Idaho's PSD program on August 20, 2018 (83 FR 42033), May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). The SIP-approved program incorporates by reference certain Federal PSD program requirements at 40 CFR 52.21 as of July 1, 2017, and implements the 2015 ozone NAAQS. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regard to PSD for the 2015 ozone NAAQS.

Turning to minor NSR, the EPA approved a consolidated pre-construction permitting program, including minor NSR, into the Idaho SIP on June 23, 1986 (51 FR 22810). Over the years, we have approved revisions to the program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164, most recently on August 12, 2016 (81 FR 53290). We have determined that the program regulates construction of new and modified minor sources for purposes of the 2015 ozone NAAQS.

Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2015 ozone NAAQS.

110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) addresses four separate elements, or ''prongs.'' CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other State (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other State (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other State's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other State's required measures to protect visibility (prong 4).

CAA section 110(a)(2)(D)(ii) states SIPs must include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring States of potential impacts from a new or modified major stationary source and specifies how a State may petition the EPA when a major source or group of stationary sources in a State is thought to contribute to certain pollution problems in another State. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

State submission: The submission addresses all interstate transport requirements of the CAA. This proposed action, however, addresses only CAA sections 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii). We intend to address the remainder of the interstate transport requirements in a separate, future action.

For purposes of CAA 110(a)(2)(D)(i)(II), the submission referenced Idaho's SIP-approved PSD program and Idaho's Regional Haze SIP submitted to the EPA on October 25, 2010. Idaho also cites IDAPA 58.01.01.209 that provides notice and comment procedures for various permit actions with regard to the public and to appropriate federal, state, international, and local agencies. CAA section 110(a)(2)(D)(ii) is discussed below.

EPA analysis: The EPA believes that the PSD sub-element of CAA section 110(a)(2)(D)(i)(II) (prong 3) is satisfied where major new and modified stationary sources in attainment and unclassifiable areas are subject to a SIP-approved PSD program. We most recently approved revisions to Idaho's SIP-approved PSD program on August 20, 2018 (83 FR 42033), May 12, 2017 (82 FR 22083), and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program is up-to-date with current Federal requirements, including implementing the 2015 ozone NAAQS. Therefore, we are proposing to approve the Idaho SIP as meeting CAA section 110(a)(2)(D)(i)(II) prong 3 with respect to PSD for the 2015 ozone NAAQS.

The EPA believes, as noted in the 2013 Guidance, where a State's regional

haze plan has been approved as meeting all current obligations, a State may rely upon those provisions in support of its demonstration that it satisfies CAA section 110(a)(2)(D)(i)(II) as it relates to visibility (prong 4). On June 9, 2011, we approved a SIP revision which provides Idaho DEQ authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho Regional Haze SIP, including the requirements for BART (76 FR 36329). Finally, on November 8, 2012, we approved the remainder of the Idaho Regional Haze SIP, including those portions that address CAA provisions that require states to set Reasonable Progress Goals for their Class I areas, and to develop a Long-Term Strategy to achieve these goals (77 FR 66929). Because we approved the Idaho plan as meeting regional haze requirements, we are proposing to approve the Idaho SIP as meeting CAA section 110(a)(2)(D)(i)(II) prong 4 visibility requirements with respect to the 2015 ozone NAAQS.

IDAPA 58.01.01.209 provides an opportunity for appropriate Federal, State, international, and local agencies to participate and identify any concerns in the permitting process. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. Idaho also has no pending obligations under CAA section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires each State to provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out the SIP (and is not prohibited by any provision of Federal or State law from carrying out the SIP or portion thereof), (ii) requirements that the State comply with the State board provisions under CAA section 128 and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of such SIP provision.

State submission: The submission refers to Idaho Code Section 39–106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department. In addition, the submission references Idaho Code 39–107, which establishes the State's Board of Environmental Quality, and Executive Order 2016–07 which addresses composition requirements of the Idaho Board of Environmental Quality. Finally, the Idaho submission references Idaho Code Section 39–129, which authorizes Idaho DEQ to enter into binding agreements with local governments that are enforceable as orders.

EPA analysis: We are proposing to find that the above-referenced provisions provide Idaho with adequate authority to carry out SIP obligations with respect to the 2015 ozone NAAQS as required by CAA section 110(a)(2)(E)(i). With regard to CAA section 110(a)(2)(E)(ii), we previously approved a revision to the Idaho SIP for purposes of meeting CAA section 128 and CAA section 110(a)(2)(E)(ii) on October 24, 2013 (78 FR 63394). Idaho renewed the Executive Order addressing certain board requirements for an additional four years on December 14, 2016 (Executive Order No. 2016–07).[5] We note that the Idaho Code Title 59 Chapter 7 (Ethics in Government Act), relied on for previous SIP Infrastructure actions, was relocated to Idaho Code Title 74 Chapter 4. Importantly, the relevant, substantive components of the law, approved for purposes of SIP authority, were retained.[6] Finally, we are proposing to find that Idaho has provided necessary assurances that, where Idaho has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, Idaho has responsibility for ensuring adequate implementation of the SIP with regard to the 2015 ozone NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2015 ozone NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submission: The submission states that the statutes and rules governing air quality permits provide Idaho DEQ with the ability to monitor stationary source emissions for compliance purposes and make data available to the public. The submission references the following provisions:

- IDAPA 58.01.01.157, which includes source testing methods and procedures for source testing and reporting to the Idaho DEQ;
- IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, record keeping, reporting and other requirements;
- IDAPA 58.01.01.211, which contains conditions for permits to construct;
- IDAPA 58.01.01.209, which contains procedures for issuing permits to construct, including public processes;
- IDAPA 58.01.01.404, which contains procedures for issuing Tier II operating permits, including public processes;
- IDAPA 58.01.01.405, which contains conditions for Tier II operating permits, including sampling ports, instrumentation to monitor and record, and performance testing; and
- Idaho Code 9–342A and IDAPA 58.01.21 which address public records.

The Idaho submission also states that Idaho reports emissions data for the six criteria pollutants to the EPA's National Emissions Inventory, which is updated every three years.

EPA analysis: The provisions cited in the submission establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. The provisions cited also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA

[5] Letter to EPA from John Tippits, Director of Department of Environmental Quality ''SIP Elements for State Boards Under Clean Air Act Section 110(a)(1)–(2). January 3, 2017.

[6] See Idaho House Bill 90, effective July 1, 2015.

58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, the State is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.*

Idaho's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 ozone NAAQS. The statutes and rules provide Idaho DEQ with the ability to monitor stationary source emissions for compliance purposes and make data publicly available. Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submission: The Idaho submission cites Idaho Code 39–112 which provides emergency order authority comparable to that in CAA section 303. In addition, the submission cites the Idaho Air Pollution Emergency Rules (IDAPA 58.01.01.550–562).

EPA analysis: CAA section 303 provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550–562 were previously approved by the EPA on January 16, 2003 (68 FR 2217). Idaho's air pollution emergency rules include ozone, establish stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153) for ozone. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of a State plan (i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining the standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submission: The submission refers to Idaho Code Sections 39–105(2) and (3)(d) which provide Idaho DEQ with broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107.

EPA analysis: We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly updates the SIP for purposes of NAAQS revisions and other related regulatory changes. We most recently approved revisions to the Idaho SIP on August 20, 2018 (83 FR 422033). Idaho has incorporated by reference the 2015 ozone NAAQS into the Idaho SIP. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2015 ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

CAA section 110(a)(2)(J) requires States to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires States to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires States to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submission: The submission refers to laws and regulations relating to public participation processes for SIP revisions and permitting programs. The submission refers to IDAPA 58.01.01.209, 364, and 404 which provide for public processes related to new source construction permits and operating permits. The submission also refers to Idaho Code Section 39–105(3)(c) which promotes outreach with local governments and Idaho Code Section 39–129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, the Idaho submission references the Idaho transportation conformity rules and regional haze rules which provide for consultation processes. With regard to public notification, the Idaho submission states that Idaho DEQ submits information to EPA's AIRNOW program and provides daily air quality index scores for many locations throughout Idaho. Finally, with regard to PSD, the submission references the Idaho rules for major source permitting at IDAPA 58.01.01.200 through 223, including PSD requirements for sources in attainment and unclassifiable areas.

EPA analysis: The Idaho SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major

source PSD permitting. The EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, State and local agencies, on November 26, 2010 (75 FR 47530). We most recently approved Idaho's rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873), and Idaho's regional haze rules on June 9, 2011 (76 FR 33651). In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2015 ozone NAAQS.

CAA section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The EPA AIRNOW program provides this air quality index daily to the public, including health effects and actions members of the public can take to reduce air pollution. Idaho actively participates and submits information to the AIRNOW program, in addition to the EPA's Enviroflash Air Quality Alert program. Idaho DEQ also provides the daily air quality index to the public on the DEQ website at *http://www.deq.idaho.gov/air-quality/monitoring/daily-reports-and-forecasts.aspx,* as well as measures that can be taken to prevent exceedances. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2015 ozone NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Idaho's PSD program on August 20, 2018 (83 FR 42033). Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submission: The submission states that air quality modeling is conducted during development of revisions to the SIP, as appropriate for Idaho to demonstrate attainment with required air quality standards. Idaho cites IDAPA 58.01.01.202.02 and IDAPA 58.01.01.402.03 which address permit to construct and Tier II operating permit application procedures and modeling requirements for estimating ambient concentrations, respectively. Modeling is also addressed in Idaho's source permitting process as discussed at section 110(a)(2)(A) above. Estimates of ambient concentrations are based on requirements specified in 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: We most recently approved IDAPA 58.01.01.107 (incorporations by reference) on August 20, 2018 (83 FR 42033). This rule incorporates by reference the following EPA regulations: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58 revised as of July 1, 2015.

Idaho's incorporation by reference of 40 CFR part 51 as of July 1, 2017 captures the EPA's recent changes to the Federal Guidelines on Air Quality Models codified in 40 CFR part 51, appendix W (Appendix W) (January 17, 2017, 82 FR 5182). Idaho's SIP requires modeled estimates of ambient concentrations based on the current version of Appendix W, consistent with the EPA's implementing regulations in 40 CFR part 51. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submission: The submission refers to IDAPA 58.01.01.387–397, which set the requirements for the annual registration of Tier I (title V) sources and the annual assessment and payment of fees to support the Tier I permitting program. The EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574). The submission also references IDAPA 58.01.01.407–409 which set the requirements for Tier II operating permit processing fees and usage.

EPA analysis: We approved Idaho's title V program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the State's SIP, it is a legal mechanism the State can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V program included a demonstration the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho regulations require permitting fees for major sources subject to new source review, as specified at IDAPA 58.01.01.224—227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires States to provide for consultation and participation in SIP development by

local political subdivisions affected by the SIP.

State submission: The submission references IDAPA 58.01.01.209, 364 and 404 which provide for the public processes related to developing and issuing air quality permits. In addition, the submission references the transportation conformity consultation and public processes at IDAPA 58.01.01.563—574. Finally, the submission references the consultation and participation process outlined in 40 CFR 51.102, incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans on August 20, 2018 (83 FR 42033). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate federal, state and local agencies, on November 26, 2010 (75 FR 47530). Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 27, 2019.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2019–06873 Filed 4–8–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0735; FRL–9991–83–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules; R307–101–3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Utah Division of Administrative Rules (DAR), specifically R307–101–3 submitted by the State of Utah on October 13, 2016. This submittal requests a State Implementation Plan (SIP) revision to change the date of the referenced Code of Federal Register (CFR) from July 1, 2014 to July 1, 2015. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before May 9, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0735, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www2.epa.gov/dockets/commenting-epa-dockets.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6103, *singh.amrita@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On October 13, 2016, the EPA received revisions for R307–101–3, General Requirements; Version of Code of Federal Regulations Incorporated by Reference from the State of Utah. Revisions submitted for R307–101–3 updates the version of the 40 CFR used in a majority of R307 rules adopted by the Utah Air Quality Board. This update allows R307 rules that reference Section R307–101–3 to update the incorporation date with only one rule amendment. States periodically update their SIPs to incorporate by reference the most current 40 CFR to correlate environmental regulations. This rule, as submitted by the State, does not cover specific R307 rules that specify their own date for the version of the CFR that are incorporated by reference. When the State of Utah updates these specific R307 rules, the EPA will act on them individually.

We previously acted on R307–101–3 on January 29, 2016 (81 FR 4957), as a final rule and received no comments. The final rule acted on the State of Utah's August 29, 2014 submittal, which amended R307–101–3 to include four chemical compounds on the list of compounds excluded from the definition of volatile organic compounds (VOC), as found in the EPA rule at 40 CFR 51.100(s), on the basis that each of these compounds make a negligible contribution to tropospheric ozone formation.

Additionally, within the October 13, 2016 submittal, the Utah Division of Air Quality (UDAQ) submitted revisions to R307–210, Stationary Sources, Standards of Performance for New Stationary Sources and R307–214, National Emissions Standards for Hazardous Air Pollutants. These rules have already been automatically delegated to the State of Utah.[1]

II. The EPA's Evaluation

Section 110(k) of the CAA addresses the EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to the EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to the EPA.

The State of Utah's Department of Environmental Quality, Air Quality Board proposed for public comment on Rule R307–101–3, General Requirements; Version of Code of Federal Regulations Incorporated by Reference on May 4, 2016. The comment period began on June 1, 2016 and ended on July 1, 2016. No public comments were received nor was a public hearing requested. The Utah Air Quality Board finalized R307–101–3 on August 3, 2016, and the rule became effective on August 4, 2016. Subsequently, on October 13, 2016, Utah submitted a SIP revision to R307–101–3, which updates the date of the referenced 40 CFR from July 1, 2014 to July 1, 2015. This update allows R307 rules that reference Section R307–101–3 to update the incorporation date with only one rule amendment.

III. Proposed Action

The EPA is proposing to approve the SIP revision to R307–101–3, General Requirements; Version of Code of Federal Regulations Incorporated by Reference, where the version of the 40 CFR is being changed from July 1, 2014 to July 1, 2015. The submittal was signed by the Governor on August 17, 2016, and officially submitted by the State on October 13, 2016.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the UDAQ rules promulgated in the DAR, R307–101–3 as discussed in section III of the preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National

[1] *https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8.*

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: April 2, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2019–06824 Filed 4–8–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0825; FRL–9991–93–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Emissions Statements Rule Certification for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the State of Delaware. Under section 182 of the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas to report annual emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC). This SIP revision provides Delaware's certification that its existing emissions statements program satisfies the emissions statements requirements of the CAA for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve Delaware's emissions statements program certification for the 2008 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before May 9, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0825 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)814–2043. Ms. Calcinore can also be reached via electronic mail at *calcinore.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. *See* 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every 5 years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, New Castle County and Sussex County in Delaware were designated as marginal nonattainment for the 2008 ozone NAAQS. New Castle County was designated as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area, which includes the following counties: New Castle in Delaware; Cecil in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania. *See* 40 CFR 81.308, 81.321, 81.331, and 81.339. Sussex County was designated marginal nonattainment as the Seaford 2008 ozone NAAQS nonattainment area, which includes only Sussex County. *See* 40 CFR 81.308.

Section 182 of the CAA identifies plan submission requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO_X and VOC to the state. However, states may waive this reporting requirement for classes or categories of stationary sources that emit under 25 tons per year (tpy) of NO_X and/or VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. *See* CAA section 182(a)(3)(B)(ii).

The EPA published guidance on source emissions statements in a July

1992 memorandum titled, ''Guidance on the Implementation of an Emission Statement Program, and in a March 14, 2006 memorandum titled, ''Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation'' (2006 memorandum). In addition, on March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statements requirement of CAA section 182(a)(3)(B) (Implementation of the 2008 Ozone NAAQS Final Rule). 80 FR 12264, codified at 40 CFR part 51, subpart AA. The 2006 memorandum clarified that the source emission statements requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Under EPA's Implementation of the 2008 Ozone NAAQS Final Rule, the source emissions statements requirement also applies to all areas designated nonattainment for the 2008 ozone NAAQS. *See* 80 FR 12264, 12291.

According to the preamble to EPA's Implementation of the 2008 Ozone NAAQS Final Rule, most areas that are required to have an emissions statements program for the 2008 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 80 FR 12264, 12291. The preamble to EPA's Implementation of the 2008 Ozone NAAQS Final Rule states, ''If an area has a previously approved emissions statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS.'' Id. In cases where an existing emissions statements rule is still adequate to meet the emissions statements requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval into the SIP to meet the requirements of CAA section 182(a)(3)(B). Id. In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statements rule. Id.

In summary, Delaware is required to submit, as a formal revision to its SIP, a statement certifying that Delaware's existing emissions statements program satisfies the requirements of CAA section 182(a)(3)(B) and covers Delaware's portions of the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE 2008 ozone NAAQS nonattainment area (*i.e.* New Castle County) and the Seaford 2008 ozone NAAQS nonattainment area (*i.e.* Sussex County).

II. Summary of SIP Revision and EPA Analysis

On June 29, 2018, the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), submitted, as a formal revision to its SIP, a statement certifying that Delaware's existing SIP-approved emissions statements program satisfies the emissions statements requirements for the 2008 ozone NAAQS. The provisions that implement Delaware's emissions statements program are under 7 DE Administrative Code 1117 Section 7.0 Emission Statement and were approved by EPA into the Delaware SIP on April 29, 1996 (61 FR 7415). *See* 40 CFR 52.420(c). Table 1 summarizes Delaware's emissions statements provisions and the corresponding CAA section 182(a)(3)(B) requirements.

TABLE 1—DELAWARE EMISSIONS STATEMENTS PROVISIONS AND CAA SECTION 182(A)(3)(B) REQUIREMENTS

CAA section 182(a)(3)(B) requirement	7 DE administrative code 1117 section 7.0 requirement
182(a)(3)(B)(i)—For marginal nonattainment areas, the State shall submit a SIP revision to require that the owner or operator of each stationary source of NO_X or VOC provide the State with a statement for classes or categories of sources showing the actual emissions of NO_X and VOC from that source.	7 DE Admin Code 1117 Section 7.1—Emissions statements requirements apply to all stationary sources located in an ozone nonattainment area that emit NO_X or VOC. 7 DE Admin Code 1117 Section 7.2—Emissions statements are required to include the following information: Source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i)—Emissions statements are required to be submitted annually.	7 DE Admin Code 1117 Section 7.3—Annual emissions statements are due April 30 for the preceding calendar year. DNREC may require more frequent emissions statements if required by EPA or if more frequent analysis of data is necessary to implement the requirements of Title 7, Chapter 60. Environmental Control of the Delaware Code (7 Del.C. Chapter 60).
182(a)(3)(B)(i)—Emissions statements shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.	7 DE Admin Code 1117 Section 7.2—Each emissions statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement, who shall be an official of the facility and will take legal responsibility for the emissions statement's accuracy.
182(a)(3)(B)(ii)—The State may waive the requirements for emissions statements for any class or category of stationary sources which emit less than 25 tpy of NO_X or VOC if the State provides an inventory of emissions from such class or category of sources as required by CAA section 172 and 182.	7 DE Admin Code 1117 Section 7.1—DNREC may, with EPA approval, waive the emissions statements requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO_X or VOCs if the class or category is included in the base year and periodic ozone SIP emission inventories.

EPA's review of Delaware's submittal finds Delaware's existing, SIP-approved emissions statements provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the emissions statements requirements of CAA section 182(a)(3)(B) for stationary sources located in marginal or above nonattainment areas in Delaware, including such sources in New Castle County and Sussex County, for the 2008 ozone NAAQS.[1] Pursuant to CAA section 182(a)(3)(B)(i), Delaware must

[1] As stated previously, New Castle County and Sussex County in Delaware are both designated as marginal nonattainment for the 2008 ozone NAAQS.

require annual emissions statements from stationary sources of NO_X or VOC located in marginal nonattainment areas. These emissions statements must be certified by an official of the facility. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 requires that all stationary sources of NO_X and VOC located in an ozone nonattainment area submit emissions statements to DNREC, except for those with actual emissions of less than 25 tpy of NO_X or VOC as permitted by CAA section 182(a)(3)(B)(ii). EPA finds Section 7.1 satisfies the requirements of CAA section 182(a)(3)(B)(i) as it requires that stationary sources located in ozone nonattainment areas in the State, including Delaware's marginal nonattainment areas for the 2008 ozone NAAQS, submit emissions statements. In addition, 7 DE Administrative Code 1117 Section 7.2 requires emissions statements be certified by an official of the facility and Section 7.3 requires emissions statements be submitted annually on April 30. EPA finds these provisions satisfy the requirements of CAA section 182(a)(3)(B)(i) for the 2008 ozone NAAQS as they require emissions statements be certified and submitted annually.

EPA also finds Delaware's emissions thresholds for stationary sources that are required to submit an emissions statement meet the threshold requirements of CAA section 182(a)(3)(B)(ii). As discussed previously, pursuant to CAA section 182(a)(3)(B)(ii), states may waive emissions statements requirements for classes or categories of stationary sources that emit less than 25 tpy of NO_X or VOC if the state provides an inventory of emissions from such classes or categories of sources as required by CAA section 172 and 182. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 waives, with EPA approval, the requirement for emissions statements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO_X or VOC if the class or category is included in the base year and periodic ozone emission inventories. Delaware does provide emissions inventories that include stationary sources in nonattainment areas that emit less than 25 tpy of NO_X or VOC, as required by CAA sections 172(c)(3) and 182(b)(3)(B)(ii).[2] Therefore, EPA finds the emissions thresholds of 7 DE Administrative Code 1117 Section 7.1 are consistent with CAA section 182(a)(3)(B)(ii).

EPA has determined that the SIP-approved provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. Therefore, EPA is proposing to approve, as a SIP revision, the State of Delaware's June 29, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

III. Proposed Action

EPA is proposing to approve, as a SIP revision, the State of Delaware's June 29, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B). Delaware's emissions statements certification certifies that Delaware's existing SIP-approved emissions statements program under 7 DE Administrative Code 1117 Section 7.0 satisfies the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, proposing approval of Delaware's emissions statements certification for the 2008 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 29, 2019.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2019–07021 Filed 4–8–19; 8:45 am]

BILLING CODE 6560–50–P

[2] *See, e.g.* ''Approval and Promulgation of Air Quality Implementation Plans; Delaware; 2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard for New Castle and Sussex Counties,'' 80 FR 59052 (October 1, 2015).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2014–0568; FRL–9991–92–Region 3]

Outer Continental Shelf Air Regulations; Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; consistency update.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before May 9, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2014–0568 at *https://www.regulations.gov,* or via email to *maldonado.zelma@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Amy Johansen, Office of Permits and State Programs (3AP10), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2156. Ms. Johansen can also be reached via electronic mail at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude. *See* 40 CFR 55.3(a). Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This proposed action is being updated, in accordance with the requirements at 40 CFR 55.12, since the last update occurred more than one year ago. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Analysis

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules, and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.[2]

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

EPA is proposing to incorporate the rules potentially applicable to sources for which the State of Maryland will be the COA. The rules that EPA proposes

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR). The rules EPA proposes to incorporate are listed in detail at the end of the document. The intended effect of proposing approval of the OCS requirements for the Maryland Department of the Environment (MDE) is to regulate emissions from OCS sources in accordance with the requirements for onshore sources.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the applicable provisions of COMAR set forth below. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.[3] The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

[3] OMB's approval of the ICR can be viewed at *www.reginfo.gov.*

EPA is proposing to incorporate the rules potentially applicable to sources for which the State of Maryland will be the COA. The rules that EPA proposes to incorporate are applicable provisions of COMAR.

List of Subjects in 40 CFR Part 55

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

Dated: March 29, 2019.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, December 06, 2018.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Maryland'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Maryland:

(a) * * *

(1) The following State of Maryland requirements are applicable to OCS Sources, December 06, 2018, State of Maryland–Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01—General Administrative Provisions (Effective as of December 06, 2018)

COMAR 26.11.02—Permits, Approvals, and Registrations (Effective as of February 12, 2018)
COMAR 26.11.03—Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)
COMAR 26.11.05—Air Pollution Episode System (Effective as of November 12, 2010)
COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)
COMAR 26.11.07—Open Fires (Effective as of November 12, 2010)
COMAR 26.11.08—Control of Incinerators (Effective as of December 06, 2018)
COMAR 26.11.09—Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 06, 2018)
COMAR 26.11.13—Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)
COMAR 26.11.15—Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.16—Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.17—Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of April 09, 2018)
COMAR 26.11.19—Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)
COMAR 26.11.20—Mobile Sources (Effective as of November 12, 2010)
COMAR 26.11.26—Conformity (Effective as of November 12, 2010)
COMAR 26.11.35—Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)
COMAR 26.11.36—Distributed Generation (Effective as of February 12, 2018)
COMAR 26.11.39—Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

* * * * *

[FR Doc. 2019–06874 Filed 4–8–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–38; FCC 19–22]

Partitioning, Disaggregation, and Leasing of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** of April 2, 2019, regarding the Commission's exploration of how potential changes to partitioning, disaggregation, and leasing rules might close the digital divide and to increase spectrum access by small and rural carriers. The document provided incorrect dates by which parties may file comments and reply comments, and incorrect contact information. This document corrects those dates and contact information.

DATES: The comment date for the proposed rule published April 2, 2019, at 84 FR 12566, is corrected. Interested parties may file comments on or before June 3, 2019; and reply comments on or before July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Anna Gentry, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–7769, email: *anna.gentry@fcc.gov.*

Correction

In the **Federal Register** of April 2, 2019, in FR Doc. 2019–06348, on page 12567, in the first column, correct the **DATES** section, and in the second column, correct the **FOR FURTHER INFORMATION CONTACT** section to read:

DATES: Interested parties may file comments on or before June 3, 2019; and reply comments on or before July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Anna Gentry, *Anna.Gentry@fcc.gov,* of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–7769. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to *PRA@fcc.gov.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–06930 Filed 4–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 12–40; FCC 19–26]

Cellular Service, Including Changes in Licensing of Unserved Area

AGENCY: Federal Communications Commission.

ACTION: Denial of petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the Petition for Reconsideration (Petition) filed on behalf of the Critical Messaging Association (CMA) regarding the Commission's Third Report and Order in the Cellular Reform proceeding (*Cellular Third R&O*). The Commission denies the Petition.

DATES: As of May 9, 2019, the petition is denied.

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

FOR FURTHER INFORMATION CONTACT: Nina Shafran, Wireless Telecommunications Bureau, (202) 418–2781 or TTY: (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in the Cellular Reform proceeding, WT Docket No. 12–40, RM Nos. 11510 and 11660, FCC 19–26, adopted March 20, 2019 and released March 22, 2019 (*Reconsideration Order*). The full text of the *Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-19-26A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In the *Cellular Third R&O,* 83 FR 37760 (Aug. 2, 2018), the Commission deleted several administrative and recordkeeping rules for Part 22 licensees, eliminating outdated burdens that were inconsistent with the Commission's practices and the current predominant use of electronic records storage and access. The Commission also deleted in its entirety a rule regarding Equal Employment Opportunity (EEO) requirements for Part 22 licensees (47 CFR 22.321). That Rule contained a number of EEO provisions, including paragraph (c) which required each Part 22 licensee to file an EEO complaints report annually regardless of the licensee's size. The Commission noted that Rule 22.321 was subsumed by another rule applying all such requirements, including the annual EEO complaints reporting requirement, to all Commercial Mobile Radio Service (CMRS) licensees—namely, Rule 90.168. The Commission concluded that, because all CMRS licensees, including Part 22 CMRS licensees, are subject to Rule 90.168, Rule 22.321 was rendered

duplicative and unnecessary in its entirety.

2. CMA timely filed a Petition for Reconsideration. CMA did not seek reconsideration of any rule change implemented in the *Cellular Third R&O;* rather, it asked the Commission to reconsider its interpretation of Rule 90.168. CMA argued that the Commission erred in construing Rule 90.168 to apply to CMRS providers that are not licensed under Part 90. Accordingly, CMA contended that with the deletion of Rule 22.321, CMRS providers licensed under Part 22 were subject only to the annual EEO reporting obligations found in Rule 1.815, which do not apply to providers with fewer than 16 employees. The Commission denies the Petition.

II. Discussion

3. The Commission rejects CMA's argument that Rule 90.168 applies solely to those CMRS licensed under Part 90, which, according to CMA, consist only of CMRS licensees operating in the Industrial/Business Radio Pool. With respect to the annual EEO complaints reporting requirement, CMA argued that Rule 90.168(c), when read together with Rule 90.1(b), subjects each CMRS licensee in the Industrial/Business Radio Pool to that annual requirement, regardless of how many employees it has, but that other CMRS licensees are not covered by Rule 90.168(c) or any other provision of Rule 90.168. CMA supplemented its Petition with an *ex parte* filing in which it noted that, when the Commission adopted 47 CFR 90.168 along with numerous other provisions in 1994 in the CMRS rulemaking proceeding, it was carrying out a directive to implement the Omnibus Budget Reconciliation Act of 1993 (OBRA). Citing that proceeding's *CMRS Second Report and Order,* CMA argued that Rule 90.168 ''and its companions were adopted and applied to Part 90 CMRS licensees (and only Part 90 CMRS licensees) in order to bring them up to the same standards already and historically applied to Part 22 CMRS licensees.''

4. The Commission denies the CMA Petition as fundamentally misreading the purpose of the Commission's EEO rules and the Commission's intent in the *Cellular Third R&O.* The Commission has long recognized the importance of having EEO rules that apply to common carriers, including all CMRS providers. The Commission purposely applied its EEO program and policy requirements broadly in 1970, and in that context, it also adopted the complaints reporting requirement for common carriers no matter their size. As the Commission stated at the time, ''discriminatory employment practices by a common carrier are incompatible with its operation in the public interest''; it further stated that, in its determinations under the Communications Act of 1934, as amended, the Commission must '' 'take into account allegations raising substantial questions whether the [entity] has violated, or is in violation of, the Civil Rights Act or a pertinent State law in this field.' '' [1] The Commission subsequently reviewed the application of EEO requirements to all CMRS in the CMRS proceeding, a proceeding in which, as CMA alluded, the Commission sought to adopt rules to establish regulatory symmetry among similar CMRS pursuant to congressional mandate. In the 1994 *CMRS Third Report and Order,* the Commission stated its purpose was to ensure application of the EEO rules ''to all CMRS providers.'' In adopting Rule 90.168, the Commission discussed at length the record evidence and concluded that it is ''appropriate and necessary'' to do so in order ''to achieve the statutory goal of increased ownership opportunities for minorities and women in spectrum-based services.'' [2]

5. Against this background, the Commission deleted Rule 22.321 in the *Cellular Third R&O,* reasoning that Rule 90.168 applies to all CMRS, including Part 22 licensees, and thus subsumes Rule 22.321. The Commission noted that Rule 90.168, with the same title and virtually identical provisions as Rule 22.321, imposes the same obligations on CMRS licensees as those that were in Rule 22.321, including the requirement to file an EEO complaints report annually regardless of the licensee's size. Concluding that Part 22 licensees were subject to the same EEO obligations under both rules, and with the intent of removing repetitive rules, the Commission deleted Rule 22.321 in its entirety. The *Cellular Third R&O* was clear that the Commission intended only to delete a duplicative rule and not to change the substantive requirements applicable to CMRS licensees.

6. The Commission disagrees with CMA's narrow interpretation of the applicability of Rule 90.168. Rule 90.168 begins by requiring that ''Commercial Mobile Radio Service licensees''—not a subset of CMRS licensees—afford equal opportunity in employment and not discriminate in employment, and then requires in Rule 90.168(c) that ''[e]ach licensee, regardless of how many employees it has, shall submit an annual report to the Commission'' indicating whether any EEO complaints have been filed against it. The Commission contrasts 47 CFR 90.168(c) with 47 CFR 1.815, which limits the scope of EEO filings to ''common carrier licensee[s] or permittee[s] with 16 or more full time employees,'' and concludes that the absence of any such delimiter in Rule 90.168(c) makes clear that the Commission did not intend to limit such EEO obligations only to CMRS licensees with 16 or more full time employees. In addition, the order adopting Rule 90.168 makes clear that the Commission intended that rule to apply to all CMRS licensees, not just to a subset. For similar reasons, the Commission rejects CMA's argument that the clear text of Rule 90.168 should be set aside because the Commission originally created Part 90 for another purpose. Nothing in that purpose clause (adopted long before Rule 90.168) claims to limit the scope of Part 90 for commercial licensees. And even if it did, the Commission reads the specific language in Rule 90.168 (applying EEO requirements to all CMRS licensees) as governing rather than the general language of the purpose clause.

7. Finally, it was not the Commission's intent in the *Cellular Third R&O* to relieve any licensee of its EEO obligations under the Commission's rules, including the annual complaints reporting requirement, regardless of a licensee's number of employees. Likewise, it was not the Commission's intent that Part 22 licensees only be subject to the Commission's EEO provisions found in Rule 1.815. The Commission reiterates that all CMRS licensees are subject to Rule 90.168, including the requirement that CMRS licensees, regardless of size, file EEO complaint reports.

III. Procedural Matters

8. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

[1] *Rulemaking to Require Communications Common Carriers to Show Nondiscrimination in Their Employment Practices,* Docket No. 18742, Report and Order, 24 F.C.C.2d 725, 726, 728 (1970).

[2] *Implementation of Sections 3(N) and 332 of the Communications Act—Regulatory Treatment of Mobile Services* (other captions omitted), GN Docket No. 93–252, PR Docket Nos. 93–144 and 94–212, Third Report and Order, 9 FCC Rcd 7988, 8096–99 (1994).

9. *Congressional Review Act.* The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

10. *Regulatory Flexibility Act.* As noted, while the *Cellular Third R&O* removed Rule 22.321, all CMRS licensees continue to be subject to current EEO obligations under the Commission's rules, including the annual complaints reporting requirement. The Commission issued a Final Regulatory Flexibility Analysis (FRFA) that conforms to the Regulatory Flexibility Act of 1980 (RFA), as amended. The Commission received no petitions for reconsideration of that FRFA. In this *Reconsideration Order,* the Commission promulgates no additional final rules, and its present action, therefore, does not alter the Commission's previous analysis under the RFA.

IV. Ordering Clauses

11. *It is ordered* that, pursuant to Sections 1, 2, 4(i), 4(j), 301, 303, 307, 308, 309, 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, 307, 308, 309, 332, and 405, and Section 1.429 of the Commission's rules, 47 CFR 1.429, this *order on reconsideration* in WT Docket No. 12–40 *is adopted.*

12. *It is furthered ordered* that, pursuant to Sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 405, and Section 1.429 of the Commission's rules, 47 CFR 1.429, the Critical Messaging Association Petition for Reconsideration is *denied.*

13. *It is further ordered* that this *order on reconsideration shall be effective* May 9, 2019.

14. *It is further ordered,* pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), that the Commission *shall send* a copy of this *order on reconsideration* to Congress and to the Government Accountability Office.

List of Subjects in 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements, Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–06923 Filed 4–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 54, and 65

[WC Docket Nos. 10–90, 14–58, 07–135 and CC Docket No. 01–92; Report No. 3120]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by Christopher W. Savage, on behalf of Pineland Telephone Cooperative, Inc. and Caressa D. Bennet, on behalf of Silver Star Telephone Company, Inc.

DATES: Oppositions to the Petitions must be filed on or before April 24, 2019. Replies to an opposition must be filed on or before May 6, 2019.

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

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, at: (202) 418–7400; email: *Alexander.Minard@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3120, released March 29, 2019. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. They also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime, FCC 18–176, published at 84 FR 4711, February 19, 2019, in WC Docket Nos. 10–90, 14–58, 07–135 and CC Docket No. 01–92. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–06962 Filed 4–8–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 84, No. 68
Tuesday, April 9, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 4, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 9, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Animal and Plant Health Inspection Service

Title: National Management Information System (Wildlife Service).

OMB Control Number: 0579–0335.

Summary of Collection: The Secretary of Agriculture is authorized under 7 U.S.C. 8351–8354 to take actions considered necessary for the control of nuisance mammals and birds, and mammal and bird species that are reservoirs for zoonotic diseases. These populations, if left unmanaged, may cause tremendous economic damage to crops, livestock herds, and private property within the United States. The Wildlife Services (WS) program of the United States Department of Agriculture Animal and Plant Health Inspection Service is responsible for assisting the public with managing damage caused by wildlife. WS provides advice or enters into agreements for its services. Through its technical assistance approach, WS offers advice through telephone or onsite consultations, training sessions, demonstration projects, and other means. Mitigation activities are then performed by the requester. Through its direct control approach, goods, services, and expertise are provided with appropriated and cooperative funds.

Need and Use of the Information: WS collects only information needed to determine appropriate courses of action for providing effective wildlife damage management services. Information is used by the agency to identify and differentiate between cooperators (*i.e.,* property owners, land managers, or resource owners) who request assistance, and to identify land areas on which management activities would be conducted. Information is also collected to identify the relationship between resources or property, WS' protection of such resources or property, the damage caused by wildlife, and the management methods or activities required to mitigate the damage. Records are maintained of cooperative service agreements and Work Initiation Documents documenting permissions to access cooperator property, wildlife damage occurrences on cooperator property and allowable methods to address wildlife damage, and occurrences which may have affected non-target species or humans during, or related to, WS project actions. Finally, information is used to help WS evaluate, modify, and improve its programs.

Description of Respondents: State and local jurisdictions, Tribes, public and private agencies, organizations, institutions, and individuals.

Number of Respondents: 98,926.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,618.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–06946 Filed 4–8–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2019–0009]

Availability of FSIS Food Product Dating Fact Sheet

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; response to comments.

SUMMARY: FSIS is announcing the availability of an updated fact sheet on food product dating. The fact sheet is aimed at reducing food waste through encouraging food manufacturers and retailers that apply product dating to use a ''Best if Used By'' date label. FSIS recommends the use of a ''Best if Used By'' date label because research shows that this phrase is easily understood by consumers as an indicator of quality rather than safety. FSIS is also responding to comments received on the previous version of the fact sheet that it announced in the December 2016 *Constituent Update.*

ADDRESSES: A downloadable version of the updated fact sheet is available to view and print at *https://www.fsis.usda.gov/wps/wcm/connect/19013cb7-8a4d-474c-8bd7-bda76b9defb3/Food-Product-Dating.pdf?MOD=AJPERES.*

FOR FURTHER INFORMATION CONTACT: Jeff Canavan, Deputy Director, Labeling and Program Delivery Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Stop Code 3784, Patriots

Plaza 3, 8–161A, 1400 Independence Avenue SW, Washington, DC 20250–3700; Telephone (301) 504–0879; Fax (202) 245–4792.

SUPPLEMENTARY INFORMATION:

Background

In the United States, approximately 30 percent of the food supply is wasted.[1] Wasted food is the single largest category of material placed in municipal landfills [2] and much of it likely could have helped feed families in need. Additionally, water, energy, and labor used to produce wasted food could have been used for other purposes.

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) to protect the health and welfare of consumers. The Agency is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, not adulterated, and correctly labeled and packaged. Consequently, FSIS is uniquely positioned to address the problem of wasted meat, poultry, and processed egg products by working with Federal, State, tribal and local governments, faith-based institutions, industry, and consumers to raise awareness of food waste issues, simplify requirements for donation,[3] and share best practices.

On December 14, 2016, FSIS announced in the *Constituent Update* [4] the availability of and requested comment on a fact sheet aimed at reducing food waste through encouraging food manufacturers and retailers that apply product dating to use a ''Best if Used By'' date label. FSIS recommended the use of a ''Best if Used By'' date label because a national survey showed that this phrase is easily understood by consumers as an indicator of food quality rather than food safety.[5]

As FSIS explained in the fact sheet, except for infant formula,[6] product dating is not required by Federal regulation. Food manufacturers frequently use a variety of phrases such as ''Sell By'' and ''Use By'' on product labels to describe quality dates on a voluntary basis. The use of different phrases to describe quality dates has likely caused consumer confusion and has led to the disposal of food, just because it is past the date printed on the package, food that is otherwise wholesome and safe.

After carefully reviewing all comments received, FSIS made minor changes to the fact sheet. These changes include updating a hyperlink to FSIS's fact sheet on shelf-stable products and adding ''Freeze By'' to the list of commonly used phrases used on labels to describe quality dates. Additionally, a footnote was added to clarify that while FSIS does not require date labeling for food quality or food safety, FSIS does require a ''pack date'' for poultry products and thermally processed, commercially sterile products to help the Agency identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness.[7] The updated fact sheet is available on the Agency's website at *https://www.fsis.usda.gov/wps/wcm/connect/19013cb7-8a4d-474c-8bd7-bda76b9defb3/Food-Product-Dating.pdf?MOD=AJPERES.*

Summary of Comments and Responses

FSIS received 46 comments on the 2016 version of the fact sheet from individual consumers, registered dietitians, employees of food assistance centers, an employee of a food processing company, the chairman of a county legislature, a food inspector, a State environmental protection agency, a trade association representing the meat industry, and a policy group associated with a law school. A summary of issues raised by commenters and the Agency's responses follows.

Comments: Most commenters liked the fact sheet and agreed that food manufacturers and retailers should use ''Best if Used By'' date labels to reduce unnecessary food waste caused by consumer label confusion. These commenters argued that because consumers understand that ''Best if Used By'' is an indicator of food quality and not food safety, they are less likely to waste food. According to these commenters, consumers know that they can safely eat food after the passage of the ''Best if Used By'' date. A policy group that supported the fact sheet also noted that ReFED, a non-profit organization committed to reducing U.S. food waste, published a report that stated that ''standardizing date labels nationally was the most cost-effective solution to reduce food waste, with the potential to divert 398,000 tons of food waste per year and provide $1.8 billion per year in economic value.''

Several commenters argued that FSIS should go a step further and require food product dating labels. The same policy group mentioned above noted that two of the largest trade groups representing the grocery and manufacturing industries launched a voluntary initiative to standardize date labels on food packages, and that these trade groups also recommended the use of ''Best if Used By'' to indicate food quality. The policy group argued that because ''Best if Used By'' is the label preferred by industry to indicate quality, FSIS should just require ''Best if Used By'' dates on all meat, poultry, and egg products. Some consumers and a registered dietitian argued that rather than require ''Best if Used By'' labels, FSIS should require safety-based consume-by date labels.

Response: At this time, FSIS does not believe it is necessary to conduct rulemaking to require ''Best if Used By'' or safety-based consume-by date labels. As noted above, members of industry are already taking steps to standardize food product dating labels on their own. Additionally, the magnitude in number, diversity, and complexity of products that exist in the marketplace make it difficult to require safety-based consume-by date labels. Food safety after the date of food production largely depends on the environmental, storage, and distribution conditions of the food. Moreover, if companies decided to use conservative safety-based consume-by dates, these labels may cause an increase in the amount of food that is wasted.

Comments: An employee of a food processing company and a food inspector argued that the phrase ''Best if Used By'' is too wordy for a food product label. The same commenters suggested that FSIS recommend the shorter phrases, ''Sell By,'' ''Use By,'' and ''Best By.'' However, a few

[1] See *https://www.ers.usda.gov/amber-waves/2013/june/ers-food-loss-data-help-inform-the-food-waste-discussion/.*

[2] See *https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials.*

[3] In January 2016, FSIS issued Directive 7020.1, which makes it easier for companies to donate wholesome products that may be misbranded or economically adulterated. The Directive is available at *https://www.fsis.usda.gov/wps/wcm/connect/25e1becc-4201-4cc0-a707-c9ed38a2f01c/7020.1.pdf?MOD=AJPERES.*

[4] *https://www.fsis.usda.gov/wps/wcm/connect/589fdc30-1f3e-4901-b594-65fc3b46bcba/ConstiUpdate121616.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=589fdc30-1f3e-4901-b594-65fc3b46bcba.*

[5] See Emily Broad Leib, Christina Rice, Roni Neff, Marie Spiker, Ali Schklair & Sally Greenberg, *Consumer Perceptions of Date Labels: National Survey,* Harvard Food Law and Policy Clinic, National Consumer Institute and Johns Hopkins Center for a Livable Future (May 2016), *http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels_May-2016.pdf.*

[6] See 21 CFR 107.20(c).

[7] See 9 CFR 381.126 and 9 CFR 431.2(e).

consumers argued that ''Best if Used By'' is too short and vague. These commenters suggested that FSIS use ''Best *Quality* if Used By.'' A trade association representing the meat industry also argued that ''Best if Used By'' is too ambiguous for meat and poultry products. According to the trade association, many meat and poultry products are currently labeled with ''Use or Freeze By'' labels to provide consumers with clear direction and offer an alternative to disposal. The trade association was concerned that consumers would not understand that products with ''Best if Used By'' labels may be frozen to extend their usability.

Response: FSIS recognizes that because food product labels are small it is important to convey information clearly and concisely. However, FSIS disagrees that ''Best if Used By'' is too short or too vague. The national survey mentioned above found that 70 percent of adults surveyed understood that ''Best if Used By'' was an indicator of food quality. Based on the survey results, FSIS believes that the phrase ''Best if Used By'' is clear and effective. And, while FSIS still recommends that companies use ''Best if Used By,'' the Agency has added ''Freeze By'' to the list of commonly used labeling phrases in the fact sheet to provide more information to consumers on what the label means.

Comment: A trade association representing the meat industry stated that shelf-life in ready-to-eat (RTE) products is often based on controlling *Listeria monocytogenes* (*Lm*), not organoleptic concerns. According to the commenter, the meat and poultry industry often applies a ''Use By'' date to ensure refrigerated RTE product safety. Therefore, the commenter argued, consumers should not be told that it is safe to consume refrigerated RTE meat and poultry products after the ''Use By'' date. The commenter argued that a distinction should be made between a ''Best if Used By'' date, where the product may be consumed after the date if there are no signs of spoilage, and a ''Use By'' date, where product should not be consumed after the date even if there are no signs of spoilage.

Response: FSIS disagrees with the comment. While some establishments may use date labeling to manage safety of refrigerated RTE meat and poultry products—not all establishments do. Only establishments producing products with an antimicrobial agent or process must establish the shelf-life of the product in order to document, either in their HACCP plan, Sanitation Standard Operating Procedures, or prerequisite program, that their antimicrobial agent or process is effective in suppressing or limiting growth of *Lm* (*see* 9 CFR 430.4(b)(1) and (2)). In addition, for those products, FSIS recommends but does not require ''Use By'' dating on labels.[8]

Comment: One consumer was confused by the statement that except for infant formula, product dating is not required by Federal regulations. The consumer questioned how this statement could be true if FSIS requires certain products to be labeled with a ''pack date.''

Response: As mentioned above, FSIS added a footnote to the fact sheet to clarify that while FSIS does not require date labeling for food quality or food safety, FSIS does require a ''pack date'' for poultry products and thermally processed, commercially sterile products to help the Agency identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness.[9]

Comments: Several commenters stated that FSIS could do more to ensure that safe, wholesome food is not wasted by providing consumer education about the meaning of date labels.

Response: Now that the fact sheet is finalized, FSIS intends to include more information about food product dating in the Agency's presentations and webinars on labeling and labeling features.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination, any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–06988 Filed 4–8–19; 8:45 am]

BILLING CODE 3410–DM–P

[8] See Controlling *Listeria monocytogenes* in Post-lethality Exposed Ready-to-Eat Meat and Poultry Products at *https://www.fsis.usda.gov/wps/wcm/connect/d3373299-50e6-47d6-a577-e74a1e549fde/Controlling-Lm-RTE-Guideline.pdf?MOD=AJPERES.*

[9] See 9 CFR 381.126 and 9 CFR 431.2(e).

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Connecticut Advisory Committee to the Commission will convene by conference call at 3:15 p.m. (EDT) on Tuesday, April 16, 2019. The purpose of the

meeting is to review and vote on work product for prosecutorial appointment project.

DATES: Tuesday, April 16, 2019; 3:15 p.m. (EDT)

Public Call-In Information: Conference call-in number: 1–855–719–5012 and conference call 2788272.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–855–719–5012 and conference call 2788272. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–855–719–5012 and conference call 2788272.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicView?id=a10t0000001gzlqAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Tuesday, April 16, 2019 at 3:15 p.m. (EDT)

- Roll Call
- Review and Vote on Work Product on Prosecutorial Appointments
- Open Comment
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: April 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–06989 Filed 4–8–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2019]

Foreign-Trade Zone (FTZ) 136—Brevard County, Florida; Notification of Proposed Production Activity; Airbus OneWeb Satellites, LLC (Satellites and Satellite Systems); Merritt Island, Florida

The Canaveral Port Authority, grantee of FTZ 136, submitted a notification of proposed production activity to the FTZ Board on behalf of Airbus OneWeb Satellites, LLC (Airbus OneWeb) located in Merritt Island, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 2, 2019.

The Airbus OneWeb facility is located within Site 7 of FTZ 136. The facility is used for the production of satellites for commercial, private, and military applications. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Airbus OneWeb from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Airbus OneWeb would be able to choose the duty rates during customs entry procedures that apply to satellites for internet/communications (duty-free). Airbus OneWeb would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Mapsil silicone adhesives; black adhesive tapes; transfer tapes; foil tapes; kapton labels and tapes; thermal washers; plastic wire tie wraps; harpoon style zip tie wiring harnesses; continuous length rolls of hooked (male) and looped (female) velcro style adhesive strip tapes; gaskets; stainless steel piping systems; xenon gas tanks; stainless steel socket screws of various lengths not exceeding 6mm in diameter; metal washers; solar array unit bushings; xenon storage tanks; individual aluminum brackets and shims (angled slugs) of varying angles and sizes; hall effect thrusters; on board computers; propulsion xenon flow systems; power processing units; lithium batteries; kapton (polyimide) insulated flexible heaters of varying sizes; wire and cable splitters; flexible channelizers; GPS antennas; GPS antenna assemblies consisting of base plates, partitions and GWA feeds and latches all for sole use with Ku and Ka band antennas; Ku band antennas; crimp style wire connectors; grounding straps; coaxial wire connectors; power conditioning and distribution units; signal amplifiers; Ka signal boosters; coaxial cables with connectors on both ends with flexible cable coverings in lengths varying from 96mm to 1065mm; wiring harnesses; dual reaction wheels, payload interface units, structure panels, crossing heat pipes, and avionics/propulsion/payload modules for communications satellites; and, sun sensors and star trackers (duty rate ranges from duty-free to 7%). The request indicates that lithium batteries will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items. The request also indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 20, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: April 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–06976 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–50–2019]

Foreign-Trade Zone 281—Miami, Florida; Application for Subzone; GDI Technology, Inc., Miami, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Miami-Dade County, grantee of FTZ 281, requesting subzone status for the facility of GDI Technology, Inc., located in Miami, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 4, 2019.

The proposed subzone (1.128 acres) is located at 12577 SW 134th Court, Miami, Florida. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 281.

In accordance with the Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 20, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 3, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Qahira El-Amin at *Qahira.El-Amin@trade.gov* or (202) 482–5928.

Dated: April 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–06980 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–21–2019]

Foreign-Trade Zone (FTZ) 291—Cameron Parish, Louisiana; Notification of Proposed Production Activity; Cheniere Energy Partners, L.P. (Liquified Natural Gas), Cameron, Louisiana

Cheniere Energy Partners, L.P. (Cheniere) submitted a notification of proposed production activity to the FTZ Board for its facility in Cameron, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 25, 2019.

The Cheniere facility is located within Site 1 of FTZ 291. The facility is used for the production of liquified natural gas. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status material and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Cheniere from customs duty payments on the foreign-status gaseous natural gas (duty free) used in export production. On its domestic sales, for the foreign-status gaseous natural gas, Cheniere would be able to choose the duty rates during customs entry procedures that apply to liquified natural gas and stabilized gas condensate (duty rates are duty-free and 10 cents/barrel, respectively). Cheniere would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The request indicates that gaseous natural gas is subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 20, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: April 3, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–06979 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of May Through November 2019 International Trade Administration Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA) is announcing five upcoming trade missions that will be recruited, organized, and implemented by ITA. These missions are:

- Safety and Security Trade Mission to Nigeria and Kenya, with an optional stop in South Africa—May 21–31, 2019.
- Infrastructure Trade Mission to Mexico—June 16–21, 2019.
- Water Trade Mission to South Africa and Angola—July 6–16, 2019.
- The 12th Annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference in Vienna, Austria—September 15–18, 2019.
- Clean Energy and Zero Emission Vehicle Technologies Business Development Mission to Mexico—November 17–22, 2019.

A summary of each mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the

trade mission website: *http://export.gov/trademissions.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman, Trade Promotion Programs, Industry and Analysis, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–3773.

The Following Conditions for Participation Will Be Used for Each Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may either: Reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for Each Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such visas will be the responsibility of the mission participant. Government fees and processing expenses to obtain such visas are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas. Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small and Medium Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Mission List: (additional information about each mission can be found at *http://export.gov/trademissions*).

Safety & Security Trade Mission to Nigeria and Kenya (With an Optional Stop in Johannesburg, South Africa)

Dates: MAY 21–31, 2019.

Summary

The United States Department of Commerce, International Trade Administration (ITA) is organizing the first safety and security trade mission to Nigeria and Kenya (May 21–29th), with an optional stop in South Africa (May 30–31st). The purpose of this mission is to help U.S. firms in the safety and security industry find business partners and sell products and services in sub-Saharan Africa.

The mission will include stops in Lagos, Nigeria and Nairobi, Kenya, with an optional stop in Johannesburg, South Africa. Participating firms will gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of products and services to Africa. The mission will include customized one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with state and local government officials and industry leaders; and networking events.

For the Nigeria leg of the trade mission, companies will have the opportunity to participate in the USA Fair, a 2-day conference and exhibition followed by a 1-day appreciation and recognition award ceremony, the Networking with the U.S.A. or ''NUSA'' awards. As background, NUSA is a self-select platform that enables the U.S. Commercial Service in Nigeria to carry out background checks and screen interested Nigerian businesses for probable enlistment in our database for client management with U.S firms looking to engage with local partners.

PROPOSED TIMETABLE

Day/date	Planned schedule of activities
Day 1, Tue, May 21st	• Travel to Nigeria (all participants). • Personal/recovery time. • Cultural welcome dinner (TBD).
Day 2, Wed, May 22nd	• Welcome and Country Briefing. • Regional Briefings. • One-on-One business matchmaking appointments. • N–USA (Nigeria—USA) Reception.
Day 3, Thurs, May 23rd	• Participation at N–USA (Nigeria—USA).
Day 4, Fri, May 24th	• One-on-One business matchmaking appointments. • Networking reception at Ambassador's residence (TBC).
Day 5, Sat, May 25th	• Travel to Kenya. • Evening welcome reception and country briefing.
Day 6, Sun, May 26th	• Free Day.
Day 7, Mon, May 27th	• One-on-One business matchmaking appointments. • Networking lunch/additional market briefings. • One-on-One business matchmaking appointments. • Networking reception at Ambassador's residence (TBC).
Day 8, Tue, May 28th	• Visit to government ministry. • One-on-One business matchmaking appointments. • Networking reception (mission wrap-up).
Day 9, Wed, May 29	• Travel to South Africa (optional stop for participants). • Personal/recovery time.
Day 10, Thurs, May 30th	• Welcome and Country Briefing (South Africa). • One-on-One business matchmaking appointments.
Day 11, Fri, May 31st	• One-on-One business matchmaking appointments. • Networking (mission wrap-up).
Day 12, Sat, June 1st	• Cultural event/visit to wildlife reserve (optional).
Day 13, Sun, June 2nd	• Return home (all participants).

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria. A minimum of 12 and maximum of 20 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to DOC in the form of a participation fee is required.

- The total participation fee for the trade mission with stops in Kenya and Nigeria is $5150 for a large firm and includes participation in the N–USA Fair.
- The total fee per participant for the trade mission with stops in Kenya and Nigeria is $3725 for a small or medium-sized enterprise (SME) and includes participation in the N–USA Fair.
- The fee for each additional firm participant (a large firm or SME) in the trade mission is $1000 (stops in Kenya and Nigeria).
- The participation fee for the optional stop in South Africa is $1,100 for a large firm and $837.00 for a SME.
- The fee for each additional firm participant (a large firm or SME) for the optional stop in South Africa is $750.00.

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than April 15, 2019. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis. Applications received after close of business on April 15, 2019. will be considered only if space and scheduling constraints permit.

Contacts

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Infrastructure Trade Mission to Mexico

Dates: June 16–21, 2019.

Summary

The United States Department of Commerce, International Trade Administration, is organizing a trade mission to Mexico to be held in Mexico City, Guadalajara, and Monterrey on June 16–21, 2019.

The trade mission will focus on sustainable building products, materials, technology, and software to improve the quality and sustainability of major infrastructure and construction projects in Mexico.

Participant companies will attend a U.S. and Mexico Infrastructure Conference in Mexico City on June 16–17 and will have a market briefing and targeted business-to-business (B2B) matchmaking appointments in up to three cities. The conference and meeting schedule will give participants access to substantive information about—and contacts for—navigating the infrastructure procurement process in Mexico, including direct interaction on project financing resources from The Export-Import Bank of the United States (Ex-Im Bank), the Overseas Private Investment Corporation (OPIC), and the U.S. Trade and Development Agency (TDA). The conference will introduce U.S. firms to Mexico's major infrastructure projects and highlight opportunities for U.S. prime contractors, sub-contractors, and suppliers in the infrastructure sectors. U.S. Participants have the option to participate in two additional mission stops in Guadalajara and/or Monterrey.

PROPOSED TIMETABLE

June 16, 2019	Travel Day/Arrival in Mexico City. Afternoon: Registration, Market Briefing and USG Resource Consultations.
June 17, 2019	Mexico City. Morning: Conference Plenary, Panels on Industry Trends, Resources, and Sector-Specific Projects. Afternoon: Luncheon and B2B Meetings. Evening: Networking Reception.
June 18, 2019	Mexico City. B2B Meetings (and Onward Travel if Participating in Optional Cities).
Optional	
June 19–21, 2019	Travel and Business-to-Business Meetings in choice of two cities: Option (A) Guadalajara. Option (B) Monterrey. Option (C) Both Guadalajara and Monterrey.
June 22, 2019	Travel Day. Return to USA.

Participation Requirements

A minimum of 10 and a maximum of 20 companies will be selected to participate in the mission. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected. During the registration process, applicants will indicate their markets/cities of choice and will receive a brief market assessment for each of those markets/cities. Applicants can select up to three markets based on the selection criteria above and the participation limits to follow. A total of 20 companies may be selected for Mexico City. Up to five companies may request and be selected for Guadalajara and/or Monterrey. U.S. companies already doing business in Mexico or seeking to enter this market for the first time may apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required.

For the conference and business-to-business meetings in Mexico City, the participation fee will be $1,950 for a small or medium-sized enterprise (SME) and $3,600 for large firms.

For business-to-business meetings in two markets/cities (Mexico City plus Guadalajara or Monterrey), the participation fee will be $3,975 for a small or medium-sized enterprise (SME) and $7,000 for large firms.

For business-to-business meetings in three markets/cities (Mexico City plus Guadalajara and Monterrey), the participation fee will be $6,000 for a small or medium-sized enterprise (SME) and $9,980 for large firms.

The mission participation fee includes the U.S. and Mexico Infrastructure Conference registration fee exclusively discounted for mission participants of $150 per primary participant from each firm.

There will be a $300 fee for each additional firm representative (large firm or SME) that wishes to participate in business-to-business meetings for each of the markets/cities selected. Additional representatives participating in the mission who wish to attend the conference will be charged the discounted registration fee of $150 available to mission participants.

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar on *www.export.gov,* the Trade Americas web page at *http://export.gov/tradeamericas/index.asp,* and other internet websites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade

associations and other multiplier groups, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than Friday, April 5, 2019. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of 20 participants is selected. After April 5, 2019, companies will be considered only if space and scheduling constraints permit.

Contacts

U.S. Trade Americas Team Contact Information

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Global Design & Construction Team Contact Information

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U.S. Commercial Service Mexico Contact Information

Paul Oliva, Commercial Officer, U.S. Commercial Service—U.S. Embassy, Mexico City, Mexico, *Paul.Oliva@trade.gov*

Adrian Orta, Commercial Specialist, U.S. Commercial Service—U.S. Embassy, Mexico City, Mexico, *Adrian.Orta@trade.gov*

U.S. Department of Commerce Water Trade Mission to South Africa and Angola

Date: July 6–16, 2019.

Summary

''The U.S. Department of Commerce is organizing a Water Trade Mission (WTM) to Johannesburg and Cape Town, with an optional stop in Angola in July 2019.

This mission will include representatives from a variety of U.S. environmental technologies-industry manufacturers and service providers, specifically with a concentration in the water and wastewater technologies subsector. The mission participants will be introduced to government officials, end-users, and customers whose needs are targeted to each participant's product or service offering. Mission participants will also be briefed by key local industry leaders on local market conditions and opportunities in the various regions of South Africa and Angola.

The goals of the Water Trade Mission to Africa are:

1. Provide market access to U.S. water and wastewater companies, especially small- and medium-sized enterprises new to the market in Africa or seeking to expand their current activities;

2. Facilitate timely connections between the government of South Africa and U.S. water technology innovators in order to address South Africa's serious water shortage, resulting in both relief for South Africa and business connections, and exports for U.S. companies;

3. Cooperate with IFAT Africa (the leading environmental technology trade fair in sub-Saharan Africa focusing on water, sewage, waste and recycling) to maximize connections between mission participants and opportunities in the water technologies subsector not limited to South Africa or Angola, but rather throughout all of Africa;

Schedule

Note: The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Saturday, July 6	• Trade Mission Participants depart for Johannesburg.
Sunday, July 7	• Trade Mission Participants arrive in Johannesburg. • Hotel Check-in.
Monday, July 8	• Country Briefing. • One-on-One business matchmaking appointments. • Networking Lunch. • One-on-One business matchmaking appointments. • Networking Reception at Consulate General's residence (TBC).
Tuesday, July 9	• Participation in IFAT show. • One-on-One business matchmaking appointments.
Wednesday, July 10	• Participation in IFAT show. • One-on-One business matchmaking appointments.
Thursday, July 11	• Participation in IFAT show. • Afternoon travel to Cape Town.
Friday, July 12	• One-on-One business matchmaking appointments. • Networking Lunch. • One-on-One business matchmaking appointments. • Evening on own.
Saturday, July 13	• Attendees wishing to travel to Angola depart for Angola; all others return home.
Sunday, July 14	• Sunday on own. • Welcome briefing.
Monday, July 15	• One-on-One business matchmaking appointments. • Networking Lunch. • One-on-One business matchmaking appointments. • Networking Reception at Ambassador's residence (TBC).
Tuesday, July 16	• Mission ends; attendees depart for home.

Participation Requirements

Applicants must sign and submit a completed Trade Mission application form and satisfy all of the conditions of participation in order to be eligible for consideration. Applications will be evaluated on the applicant's ability to best satisfy the selection criteria. A minimum of 10 and maximum of 15 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for

the Water Trade Mission to South Africa only will be $3,200 for small or medium-sized enterprises (SME); and $4,100 for large firms or trade associations. Participation in the South Africa portion includes admission to the IFAT Africa event in Johannesburg. If a firm wishes to travel to the optional Angola stop, an SME will pay an additional $1,200 for a total of $4,400 and a large firm will pay an additional $2,000 for a total of $6,100. The fee for each additional firm representative (large firm or SME/trade association) is $1,000. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant unless otherwise noted. Interpreter and driver services can be arranged for additional cost. Delegation members can take advantage of U.S. Embassy rates for hotel rooms.

Timeline for Recruitment

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than May 3, 2019. The U.S. Department of Commerce will review applications and inform applicants of selection decisions periodically during the recruitment period. All applications received after the evaluation date will be considered at the next evaluation. Applications received after May 3, 2019 will be considered if space/scheduling constraints permit.

Contacts

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12th Annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference in Vienna, Austria

Date: September 15–18, 2019.

Summary

The United States Department of Commerce's (DOC) International Trade Administration (ITA), with participation from the U.S. Departments of Energy and State, is organizing the 12th Annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference, to be held September 15–18, 2019, in Vienna, Austria. The IAEA General Conference is the premier global meeting of civil nuclear policymakers and typically attracts senior officials and industry representatives from all 170 Member States. The U.S. Industry Program is part of the U.S. Department of Commerce's (DOC) Civil Nuclear Trade Initiative, a U.S. Government effort to help U.S. civil nuclear companies identify and capitalize on commercial civil nuclear opportunities around the world. The purpose of the program is to help the U.S. nuclear industry promote its services and technologies to an international audience, including senior energy policymakers from current and emerging markets as well as IAEA staff.

Representatives of U.S. companies from across the U.S. civil nuclear supply chain are eligible to participate. In addition, organizations providing related services to the industry, such as universities, research institutions, and U.S. civil nuclear trade associations, are eligible for participation. The mission will help U.S. participants gain market insights, make industry contacts, solidify business strategies, and identify or advance specific projects with the goal of increasing U.S. civil nuclear exports to a wide variety of countries interested in nuclear energy.

The schedule includes: Meetings with foreign delegations and discussions with senior U.S. Government officials on important civil nuclear topics including regulatory, technology and standards, liability, public acceptance, export controls, financing, infrastructure development, and R&D cooperation. Past U.S. Industry Programs have included participation by the U.S. Secretary of Energy, the Chairman of the U.S. Nuclear Regulatory Commission (NRC) and senior U.S. Government officials from the Departments of Commerce, Energy, State, the Export-Import Bank of the United States and the National Security Council.

There are significant opportunities for U.S. businesses in the global civil nuclear energy market. With 55 reactors currently under construction in 15 countries and 160 nuclear plant projects planned in 27 countries over the next 8–10 years, this translates to a market demand for equipment and services totaling $500–740 billion over the next ten years. This mission contributes to DOC's Civil Nuclear Trade Initiative by assisting U.S. businesses in entering or expanding in international markets.

PROPOSED TIMETABLE

****** Note that specific events and meeting times have yet to be confirmed ******

Sunday, September 15	
3:00 p.m.–5:00 p.m.	1–1 Showtime Meetings with visiting ITA Staff.
6:00 p.m.–8:00 p.m.	U.S. Industry Welcome Reception.
Monday, September 16	
7:00 a.m.	Industry Program Breakfast Begins.
8:00–9:45 a.m.	U.S. Policymakers Roundtable.
9:45–10:00 a.m.	Break.
10:00–11:00 a.m.	USG Dialogue with Industry.
11:00 a.m.–6:00 p.m.	IAEA Side Events.
11:00 a.m.–12:30 p.m.	Break.
12:30–6:00 p.m.	Country Briefings for Industry Delegation (presented by foreign delegates).
7:30–9:30 p.m.	U.S. Mission to the IAEA Reception.

PROPOSED TIMETABLE—Continued

Tuesday, September 17	
9:00 a.m.–6:00 p.m.	Country Briefings for Industry (presented by foreign delegates).
10:00 a.m.–6:00 p.m.	IAEA Side Event Meetings.
Wednesday, September 18	
9:00 a.m.–6:00 p.m.	Country Briefings for Industry (presented by foreign delegates).
10:00 a.m.–6:00 p.m.	IAEA Side Event Meetings.

Participation Requirements

Applicants must sign and submit a completed Trade Mission application form and satisfy all of the conditions of participation in order to be eligible for consideration. Applications will be evaluated on the applicant's ability to best satisfy the selection criteria. A minimum of 15 and maximum of 50 companies and/or trade associations and/or U.S. academic and research institutions will be selected to participate in the mission. The first fifteen applicants accepted will be permitted to send two representatives per organization (if desired). After the first fifteen applicants, additional representatives will be permitted only if space is available. The Department of Commerce will begin evaluating applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

Fees and Expenses

After a company or organization has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The fee covers ITA support to register U.S. industry participants for the IAEA General Conference. Participants will be able to take advantage of discounted rates for hotel rooms.

• The fee to participate in the event is $4,800 for a large company and $3,800 for a small or medium-sized company (SME), a trade association, or a U.S. university or research institution. The fee for each additional representative (large company, trade association, university/research institution, or SME) is $1,400.

Participants selected for the Trade Mission will be expected to pay for the cost of all personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. In the event that the mission is cancelled, no personal expenses paid in anticipation of a Trade Mission will be reimbursed. However, participation fees for a cancelled Trade Mission will be reimbursed to the extent they have not already been expended in the anticipation of the Mission.

Timeframe for Recruitment and Application

Recruitment for participation in the U.S. Industry Program as a representative of the U.S. civil nuclear industry will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the DOC trade mission calendar, notices to industry trade associations and other multiplier groups. Recruitment will begin after publication in the **Federal Register** and conclude no later than July 19, 2019. The ITA will review applications and make selection decisions on a rolling basis. Applications received after July 19, 2019, will be considered only if space and scheduling permit.

Contacts

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Clean Energy and Zero Emission Vehicle Technologies Trade Mission to Mexico

Dates: November 17–22, 2019.

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Clean Energy and Zero Emission Vehicle Technologies Business Development Mission to Mexico City, the State of Mexico and Puebla.

This trade mission will expand business opportunities for U.S. exporters of clean energy products, services and technologies, by introducing them to Mexican automakers (OEMs), tier 1 and 2 suppliers, and relevant government agencies.

The incoming Mexico City government supports mobility initiatives, such as the replacement of private and public transportation, including taxi fleets, to drastically reduce emissions in the city. Moreover, the current Mexico City government has exempted electric and hybrid vehicles from local taxes and emission control verification processes. As a result, there is stronger potential to sell zero emission vehicles. In 2017, electric and hybrid vehicles sales grew 27.3 percent compared to 2016, reaching over 10,000 units sold.

Mexico has established a goal to reduce greenhouse gas emissions by 30 percent by the end of the decade, which will have a significant impact on manufacturing, including in the auto sector. In addition, Mexico intends to increase electricity generated from clean sources to 35 percent by 2024 and 50 percent by 2050. The responsibility for generating clean energy belongs to the participants in the electricity market (large consumers of electricity) and the Clean Energy Certificate (CEL) mechanism became mandatory for industrial and commercial users in 2018.

Automotive OEMs and tier 1 and 2 suppliers are increasingly interested in sustainable technologies, products and services for the manufacturing of electric and hybrid vehicles. The new U.S.-Mexico-Canada Agreement (USMCA) also is expected to foster additional opportunities for U.S. exports of components and parts by increasing the regional value content required to benefit from the tariff preferences. These factors contribute to the opening of a broader range of business opportunities in the Mexican market for U.S. exporters of clean energy technologies such as energy storage and efficiency, batteries, catalyzers, and electric chargers.

Moreover, automotive manufacturers are interested in investing in renewable energy generation technologies to lower the cost of their electricity consumption, comply with federal law, and be consistent with clean manufacturing best practices in the production of low-emissions vehicles and auto parts.

PROPOSED TIMETABLE

Sunday, November 17	• Trade mission participants arrive in Mexico City. • Welcome and country briefing. • Clean energy briefing. • Automotive briefing. • Q&A session.
Monday, November 18	• Seminar (morning). • Energy speaker. • Automotive speaker. • Roundtables (3 sessions). • Clean energy roundtable. • Automotive roundtable. • Standards roundtable. • Seminar (lunch). • Carmaker plant visit. • Carmaker one-on-one business matchmaking appointments. • Networking reception at Ambassador's residence or hotel (TBD).
Tuesday, November 19	• One-on-one business matchmaking appointments in Mexico City and State of Mexico. • Lunch. • Depart by bus to Puebla State.
Wednesday, November 20	• Wind or solar project plant visit by bus. • Automotive tier plant visit. • One-on-one business matchmaking appointments in Puebla (hotel).
Thursday, November 21	• One-on-one business matchmaking appointments in Puebla. • Lunch. • Carmaker plant visit in Puebla.
Friday, November 22	• Trade mission participants depart.

Participation Requirements

Applicants must sign and submit a completed Trade Mission application form and satisfy all of the conditions of participation in order to be eligible for consideration. Applications will be evaluated on the applicant's ability to best satisfy the selection criteria. A minimum of 15 and maximum of 20 firms will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be $4,064.05 for SME and $5,591.71 for large firms (Mexico City including State of Mexico and Puebla). The fee for each additional firm representative (large firm or SME) is $1,000.00. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost.

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the U.S. Department of Commerce trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 31, 2019. The U.S. Department of Commerce will review applications and inform applicants of selection decisions periodically during the recruitment period beginning immediately. All applications received subsequent to an evaluation date will be considered at the next evaluation. Applications received after April 1, 2019, will be considered only if space and scheduling constraints permit.

Contacts

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Program Specialist, Trade Promotion Programs.

[FR Doc. 2019–07008 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG934

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of SEDAR 61 Assessment Webinar IV for Gulf of Mexico red grouper.

SUMMARY: The SEDAR 61 stock assessment process for Gulf of Mexico red grouper will consist of an in-person workshop, and a series of data and assessment webinars.

DATES: The SEDAR 61 Assessment Webinar IV will be held May 1, 2019, from 10 a.m. until 12 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; Email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the in-person workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each webinar.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 4, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–07014 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG939

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet in April, in Anchorage, AK.

DATES: The meeting will be held on Monday, April 29, 2019 through Friday, May 3, 2019, from 9 a.m. to 5 p.m. Alaska Standard Time.

ADDRESSES: The meeting will be held in the Susitna Room, at the Coast International Inn, 3450 Aviation Ave., Anchorage, AK 99502. Teleconference number is (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, April 29, 2019 Through Friday, May 3, 2019

The agenda will include: (a) Final 2019 stock assessments for Aleutian Islands Golden King Crab and Pribilof Island Blue King Crab; (b) discussions and stock assessment modeling scenarios for Snow Crab, Tanner Crab, Bristol Bay Red King Crab, and Pribilof Island Red King Crab; (c) stock assessment and rebuilding plan for St. Matthew Blue King Crab; (d) planning discussions on the use of GMACS and VAST; (e) review of the Economic SAFE; and (f) other business.

The Agenda is subject to change, and the latest version will be posted at *meetings.npfmc.org* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically via the eCommenting portal at: *meetings.npfmc.org* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 4, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–07015 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG941

South Atlantic Fishery Management Council (Council)—Public Meetings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings via webinar pertaining to Regulatory Amendment 29 to the South Atlantic Snapper Grouper

Fishery Management Plan (FMP). The amendment addresses best fishing practices and powerhead regulations.

DATES: The public hearings will be held via webinar on April 30 and May 1, 2019.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The public hearings will be conducted via webinar beginning at 6 p.m. Registration for the webinars is required. Registration information, public hearing documents, and other materials will be posted on the Council's website at *http://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as they become available. An online public comment form will also be available and information on how to submit written comments posted to the website. Public comments must be received by 5 p.m. on May 10, 2019.

Regulatory Amendment 29 to the Snapper Grouper Fishery Management Plan

The draft amendment currently addresses the use of best fishing practices intended to improve survivorship of species in the snapper grouper management complex released due to regulatory requirements and other factors. Best practices under consideration include: The use of descending devices and/or venting devices to release fish experiencing barotrauma (injury due to expansion of gas when reeled up from depth), and modifications to current non-stainless steel circle hook requirements. Additionally, the draft amendment considers modifying powerhead regulations in the exclusive economic zone in the Council's area of jurisdiction.

During the public hearings, Council staff will present an overview of the amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 4, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–07016 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG932

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plans for the Exclusive Economic Zones of Puerto Rico, St. Thomas/St. John, St. Croix

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

ACTION: Notice; Withdrawal of notice of intent to prepare draft environmental impact statements (EIS).

SUMMARY: The NMFS Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), is preparing a draft EA in accordance with the National Environmental Policy Act (NEPA) for each of the following fishery management plans (FMP): The Comprehensive FMP for the Puerto Rico Exclusive Economic Zone (EEZ) (Puerto Rico FMP), the Comprehensive FMP for the St. Thomas/St. John EEZ (St. Thomas/St. John FMP), and the Comprehensive FMP for the St. Croix EEZ (St. Croix FMP). The respective plans would transition the management of Federal fisheries in the U.S. Caribbean EEZ from a species-based approach to an island-based approach. This notice is intended to inform the public of the change from the preparation of a draft EIS to a draft environmental assessment (EA) for each FMP.

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

SUPPLEMENTARY INFORMATION: Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: The FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP); the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP); the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP); and the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the USVI requested that the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean EEZ to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its March 2013 meeting, the Council began the process of developing island-based FMPs. The Council preliminarily determined to proceed with FMPs applicable to three U.S. Caribbean EEZ management areas: (1) Puerto Rico; (2) St. Thomas/St. John, USVI; and (3) St. Croix, USVI. If approved, a comprehensive FMP for each of the identified island management areas would replace the existing species-based FMPs. This change in U.S. Caribbean fishery management strategy provides a means to increase the flexibility of fisheries management to the individual characteristics of each of the island management areas.

On June 6, 2013, NMFS published in the **Federal Register** a notice of intent (NOI) to prepare a draft EIS for each of the three proposed island-based FMPs, the Puerto Rico FMP (78 FR 34041), St. Thomas/St. John FMP (78 FR 34042), and St. Croix FMP (78 FR 34044). Supplemental NOIs were subsequently published on March 11, 2014, and May 12, 2014, for the Puerto Rico FMP (79 FR 13624 and 79 FR 26946), on March 12, 2014, and May 12, 2014, for the St. Thomas/St. John FMP (79 FR 13988 and 79 FR 26949), and on March 10, 2014, and May 12, 2014, for the St. Croix FMP (79 FR 13280 and 79 FR 26947). The supplemental NOIs announced additional opportunity for public comment.

Developing and implementing the Puerto Rico, St. Thomas/St. John, and St. Croix FMPs would transition Federal management in the U.S. Caribbean EEZ from a species-based approach to an island-based approach. Each FMP would incorporate and replace those components of the Caribbean-wide Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs that pertain to the EEZ

surrounding the respective island(s). For each FMP, the actions considered would incorporate existing management measures such as seasonal and area closures and revise other measures such as the species to be managed, stock/stock complex composition, management reference points, accountability measures, description of essential fish habitat for stocks new to Federal management, and updated framework procedures, as deemed necessary by the Council.

NMFS has reassessed the actions in each FMP relative to NEPA and its requirements and has preliminarily determined that the proposed actions would not significantly affect the quality of the human environment and that draft EISs were not required. As a result of this determination, NMFS, in collaboration with the Council, will develop a draft EA for each new FMP rather than proceeding with the development of draft EISs. The Council held public hearings to discuss the actions included in each FMP in Puerto Rico on April 1–3, 2019, in St. Thomas on April 3, 2019, and in St. Croix on April 4, 2019 (84 FR 9099, March 13, 2019), and will also take public comment on the document at the April 2019 Council meeting in San Juan, Puerto Rico. Exact dates, times, and locations of any future public hearings will be announced by the Council and will be posted to their website at: *https://www.caribbeanfmc.com/meeting-documents.*

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final FMPs, their proposed implementing regulations, and the availability of the associated EAs. NMFS will consider all public comments received, whether they are on the final FMP, the proposed regulations, or the EA, prior to final agency action.

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

Dated: April 3, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–06957 Filed 4–8–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0009, Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on large trader reports and related forms.

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0009 by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. 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.*

FOR FURTHER INFORMATION CONTACT: Jonathan Lave, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5983; email: *jlave@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Large Trader Reports (OMB Control No. 3038–0009). This is a request for extension of a currently approved information collection.

Abstract: The reporting rules covered by OMB control number 3038–0009 (''the Collection'') are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs. The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations.

The reporting rules are implemented by the Commission partly pursuant to the authority of Sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act. Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits. Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options. Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and registrants (including futures commission merchants (FCMs), introducing brokers, floor brokers, or floor traders), and requires each registrant to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere. Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or derivatives transaction execution facilities equal or exceed Commission-set levels.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

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.

Burden Statement: The respondent burden for this collection is estimated to be 0.26 hour per response, on average. These estimates include the time to locate the information related to the exemptions and to file necessary exemption paperwork. There are approximately 74,418 responses annually, thus the estimated total annual burden on respondents is 19,676 hours.

Respondents/Affected Entities: Large Traders, Clearing Members, Contract Markets, and other entities affected by Commission regulations 16.00 and 17.00 as well as Parts 19 and 21.

Estimated number of respondents: 480.

Estimated total annual burden on respondents: 19,676 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 3, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–06938 Filed 4–8–19; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0078, Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers).

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: You may submit comments, identified by ''Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers,'' and OMB Control No. 3038–0078 by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above. Please submit your comments using only one method. 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.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA,[1] Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (OMB Control No. 3038–0078). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers) [2] pursuant to section 4d(c) [3] of the Commodity Exchange Act (''CEA''). Commission regulation 1.71 requires generally that, among other things, futures commission merchants (''FCM'') [4] and introducing brokers (''IB'') [5] develop conflicts of interest procedures and disclosures, adopt and implement written policies and procedures reasonably designed to ensure compliance with their conflicts of interest and disclosure obligations, and maintain specified records related to those requirements.[6] The Commission believes that the information collection obligations imposed by Commission Regulation 1.71 are essential (i) to ensuring that FCMs and IBs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA, and Commission regulations, and (ii) to the effective evaluation of these

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 1.71.

[3] 7 U.S.C. 6d(c).

[4] For the definition of FCM, see section 1a(28) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(28) and 17 CFR 1.3.

[5] For the definition of IB, see section 1a(31) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(31) and 17 CFR 1.3.

[6] *See* 17 CFR 1.71.

registrants' actual compliance with the CEA and Commission regulations.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

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.[7]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of registered FCMs and IBs. Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1,244.

Estimated Average Burden Hours per Respondent: 44.5.

Estimated Total Annual Burden Hours: 55,358.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 3, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–06940 Filed 4–8–19; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0024; Regulations and Forms Pertaining to the Financial Integrity of the Marketplace

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the extension of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed revision of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the obligation of registrants to provide records related to their minimum financial requirements.

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: You may submit comments, and ''OMB Control No. 3038–0024'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. 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.*

FOR FURTHER INFORMATION CONTACT: Joshua Beale, Associate Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5447; email: *jbeale@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice for the extension of the collection listed below.

Title: Regulations and Forms Pertaining to the Financial Integrity of the Marketplace (OMB Control No. 3038–0024). This is a request for an extension of a currently approved information collection.

Abstract: The Commission is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission's regulations requires, among other things, that commodity brokers—known as futures commission merchants (''FCMs''), or Introducing Brokers (''IBs''), comply with certain minimum financial requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs and IBs to file financial reports with the Commission and with the designated self-regulatory organization of which they are members as well as to report to the Commission should certain financial requirements drop below prescribed minimums.

In 2008, the U.S. Congress passed the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2189–2204 (2008), also known as the Farm Bill. The Farm Bill provided the Commission with new authority with regard to the regulation of off-exchange retail forex transactions. Among other things, it directed the Commission to draft rules effectuating registration provisions for a new category of registrant—the retail foreign exchange dealer (''RFED''). Under the

[7] 17 CFR 145.9.

terms of the legislation, RFEDs are subject to the same capital requirements as FCMs that are engaged in retail forex transactions, and, therefore, subject to the same reporting requirements. Accordingly, this collection was amended to reflect the financial reporting requirements of the new category of registrant, RFEDs.

In 2010, the U.S. Congress passed the Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), giving the Commission the authority to regulate certain swap markets and participants in those markets. Section 731 of the Dodd-Frank Act, amended the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.,* to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers (''SDs'') and major swap participants (''MSPs''). In 2016, the Commission finalized the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants rule to implement those requirements. Specifically, Regulation 23.154(b) require SDs and MSPs that do not have a prudential regulator (''Covered Swap Entities'' or ''CSEs'') that are using a model to compute initial margin requirements to submit the model for review and approval by the Commission or a registered futures association. CSEs must also notify the Commission upon making certain changes to the model. The information required for the prior written approval of the margin model or for certain changes to such model, is needed to demonstrate that the model satisfies all of the requirements of Regulation 23.154(b).

Separately, in 2013, the Commission finalized rules in an effort to prevent unauthorized usage of customer funds by FCMs and RFEDs. The final rules include modifications to the reporting requirements required by the Commission which resulted in changes to the financial statements filed by FCMs and RFEDs, and made some of the recordkeeping requirements already contained in this OMB Collection Number 3038–0024 into reporting requirements. These rules added additional recordkeeping requirements by FCMs to assure the segregation of customer funds.

This collection, OMB Control No. 3038–0024, is needed for the Commission to continue its financial monitoring of its registrants. The burden hours are being revised to reflect the current number of registrants and updated to reflect more accurate numbers regarding the number of financial reports filed, based on current historical data.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

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.

Burden Statement: The Commission is revising its estimate of the burden for this collection for approximately 66 FCMs and RFEDs, 50 CSEs and 1,178 IBs. The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: FCMs, RFEDs, IBs, SDs, and MSPs that do not have a Prudential Regulator.

Estimated Number of Respondents: 1,294.

Estimated Average Burden Hours per Respondent: 62.

Estimated Total Annual Burden Hours: 80,837.

Frequency of Collection: Various. For example, FCMs have both daily and monthly financial reporting obligations, annual certified financial and compliance report obligations, and periodic notice requirements.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 3, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–06939 Filed 4–8–19; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0036]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Defense Finance and Accounting Service is rescinding a system of records, T7901a, The Standard Negotiable Instrument Processing System. This system of records was designed to process checks for the U.S. Army Active and Reserve military members to produce reports for processing reconciliation checks.

DATES: This action will be effective April 9, 2019. The specific date for when this system ceased to be a Privacy Act System of Records is February 22, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, DFAS Privacy Officer, Defense Finance and Accounting Service, Corporate Communications Office, FOIA/PA Adherence Division, 8899 East 56th St., Indianapolis, IN 46249–3300, (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Standard Negotiable Instrument Processing System (SNIPS) is no longer in use and is considered deactivated. All SNIPS customers successfully migrated to the system of records, T7320a, Deployable Disbursing System, 78 FR 14286 (March 5, 2013).

The Defense Finance and Accounting Service system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the

Defense Privacy, Civil Liberties and Transparency Division website at *http://dpcld.defense.gov/privacy.* The proposed systems reports, as required by the Privacy Act of 1974, as amended, were submitted on January 14, 2019, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and on February 8, 2019, to the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER

The Standard Negotiable Instrument Processing System, T7901a.

HISTORY:

March 12, 2014, 79 FR 14010.

Dated: April 3, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–06941 Filed 4–8–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Nanoarmor, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent to grant license.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Nanoarmor, LLC a revocable, nonassignable, exclusive license to practice the Government-Owned invention described in U.S. Patent Application No. 11/157,751 (Navy Case No. 97280; U.S. Patent No. 8,220,378 titled ''Composite Armor Panel and Method of Manufacturing Same''; and any continuations, divisionals, or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the publication date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Surface Warfare Center, Dahlgren Division, Technology Transfer Office of Research and Technology Applications (ORTA), Code 00T, Attention: Melody Ryan, 6149 Welsh Road, Suite 203, Bldg. 180, Rm. 253, Dahlgren, Virginia 22448–5130. File an electronic copy of objections with *melody.ryan@navy.mil.*

FOR FURTHER INFORMATION CONTACT: Melody Ryan, 540–653–1417, *melody.ryan@navy.mil.*

(Authority: 35 U.S.C. 209(e); 37 CFR 404.7)

Dated: April 4, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–06968 Filed 4–8–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0049]

Agency Information Collection Activities; Comment Request; 2019–20 National Postsecondary Student Aid Study (NPSAS: 20) Institution Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 10, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0049. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2019–20 National Postsecondary Student Aid Study (NPSAS:20) Institution Collection.

OMB Control Number: 1850–0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 6,073.

Total Estimated Number of Annual Burden Hours: 13,577.

Abstract: The 2019–20 National Postsecondary Student Aid Study (NPSAS:20) is a nationally representative cross-sectional study of how students and their families finance education beyond high school in a given academic year. NPSAS is conducted by the National Center for Education Statistics (NCES) and was first implemented by NCES during the 1986–87 academic year and has been fielded every 2 to 4 years since. This request is to conduct the 11th cycle in the NPSAS series that will be conducted during the 2019–20 academic year. NPSAS:20 will be both nationally- and state-representative. NPSAS:20 also will serve as the base year data collection for

the 2020 cohort of the Beginning Postsecondary Students Longitudinal Study (BPS:20), a study of first-time beginning postsecondary students that will be conducted three years (BPS:20/22) and six years (BPS:20/25) after beginning their postsecondary education. NPSAS:20 will consist of nationally-representative sample undergraduate and graduate students, and a nationally-representative sample of first-time beginning students (FTBs). Subsets of questions in the student interview will focus on describing aspects of the experience of beginning students in their first year of postsecondary education, including student debt and education experiences. This submission covers materials and procedures related to institution sampling, institution contacting, enrollment list collection, and matching to administrative data files as part of the NPSAS:20 data collection. NCES will submit a separate clearance package covering the NPSAS:20 student data collection, including student record data abstraction and student interviews, in the summer of 2019. The materials and procedures are based on those developed for previous institution-based data collections, including NPSAS:16, BPS:12 student record collection, and the 2018 NPSAS Administrative Collection (NPSAS:18–AC). The NPSAS:20 enrollment list collection from institutions will take place from October 2019 through July 2020, the student records collection will take place from February through November 2020, and the student survey data collection will take place from January through November 2020.

Dated: April 3, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06920 Filed 4–8–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–203]

Alabama Power Company ; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 349–203.

c. *Date Filed:* March 1, 2019.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* Tallapoosa River, in Elmore County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Justin Bearden, Shoreline Management, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35203, (205) 257–6769, *jbearden@southernco.com.*

i. *FERC Contact:* Shana High, (202) 502–8674.

j. *Deadline for filing comments, motions to intervene, and protests:* May 3, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–349–203. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power Company proposes to permit the construction of three docks associated with The Hideaway at Stillwaters, a residential development located outside the project boundary. The proposed docks would accommodate 50 watercraft (18 boats and 32 personal watercraft).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06977 Filed 4–8–19; 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: RP19–51–003.
Applicants: Bear Creek Storage Company, L.L.C.
Description: Compliance filing Bear Creek Cost and Revenue Study Compliance Filing in RP19–51.
Filed Date: 4/1/19.
Accession Number: 20190401–5192.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1029–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: Filing Withdrawal: Order 587–Y Withdrawal.
Filed Date: 4/2/19.
Accession Number: 20190402–5178.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1030–000.
Applicants: American Midstream (Midla), LLC.
Description: Filing Withdrawal: Order 587–Y Withdrawal.
Filed Date: 4/2/19.
Accession Number: 20190402–5179.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1031–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: Filing Withdrawal: Order 587–Y Withdrawal.
Filed Date: 4/2/19.
Accession Number: 20190402–5180.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1032–000.
Applicants: High Point Gas Transmission, LLC.
Description: Filing Withdrawal: Order 587–Y Withdrawal.
Filed Date: 4/2/19.
Accession Number: 20190402–5181.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1033–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Filing Withdrawal: Order 587–Y Withdrawal.
Filed Date: 4/2/19.
Accession Number: 20190402–5182.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1098–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Definitions Filing to be effective 6/1/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5012.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1099–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 4–2–19 to be effective 4/1/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5026.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1101–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing Stratton Ridge (CP17–56) In-Service Compliance Filing to be effective 6/1/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5160.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1102–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: Tariff Rep Name Change (Empire) to be effective 5/2/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5168.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1103–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: Tariff Rep Name Change (Supply) to be effective 5/2/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5170.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1104–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (St. James, ASR, and Turnback) to be effective 5/1/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5214.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–995–001.
Applicants: Texas Gas Transmission, LLC.
Description: Tariff Amendment: Amendment to Docket No. RP19–995–000 to be effective 4/1/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5150.
Comments Due: 5 p.m. ET 4/15/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06973 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request

only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
None.		
Exempt:		
1. P–2100–000	3–15–2019	U.S. House of Representative Doug LaMalfa.
2. ER19–603–000	3–19–2019	U.S. Congressmen.[1]
3. P–2413–000	3–21–2019	U.S. Senator Johnny Isakson.
4. ER19–570–000	3–22–2019	Governor Charles D. Baker, Commonwealth of Massachusetts.
5. CP19–14–000	3–28–2019	Congressman Mark Walker.

[1] Congressmen Bill Johnson and Troy Balderson.

Dated: April 2, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06933 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–10–000]

Commission Information Collection Activities (FERC–912); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–912 (PURPA Section 210(m) Notification Requirements Applicable to Cogeneration and Small Power Production Facilities) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. On January 31, 2019, the Commission published a Notice in the **Federal Register** in Docket No. IC19–10–000 requesting public comments. The Commission received no public comments and is noting that in the related submittal to OMB.

DATES: Comments on the collection of information are due May 9, 2019.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0225, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–10–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–912, PURPA Section 210(m) Notification Requirements Applicable to Cogeneration and Small Power Production Facilities.

OMB Control No.: 1902–0237.

Type of Request: Three-year extension of the FERC–912 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: On 8/8/2005, the Energy Policy Act of 2005 (EPAct 2005)[1] was signed into law. Section 1253(a) of EPAct 2005 amends Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding subsection ''(m),'' that provides, based on a specified showing, for the termination and subsequent reinstatement of an electric utility's obligation to purchase from, and sell energy and capacity to, qualifying facilities (QFs). 18 CFR 292.309–292.313 are the implementing regulations, and provide procedures for:

- An electric utility to file an application for the termination of its obligation to purchase energy and capacity from, or sell to, a QF;[2] and
- An affected entity or person to subsequently apply to the Commission for an order reinstating the electric utility's obligation to purchase energy and capacity from, or sell to, a QF.[3]

Type of Respondent: Electric utilities, principally.

[1] Public Law 109–58, 119 Stat. 594 (2005).

[2] 18 CFR 292.310 and 292.312.

[3] 18 CFR 292.311 and 292.313.

Estimate of Annual Burden:[4] The Commission estimates the annual burden and cost, as follows.[5]

FERC–912, PURPA Section 210(m) Notification Requirements Applicable to Cogeneration and Small Power Production Facilities

	Number of respondents	Number of responses per respondent	Total number of responses	Average burden hrs. & average cost per response ($)	Total annual burden hrs. & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)	(5) ÷ (1) = (6)
Termination of obligation to purchase	7	1	7	12 hrs.; $948	84 hrs.; $6,636	$948
Reinstatement of obligations to purchase.	0	0	0	0 hrs.; $0	0 hrs.; $0	0
Termination of obligation to sell	2	1	2	8 hrs.; $632	16 hrs.; $1,264	632
Reinstatement of obligation to sell	0	0	0	0 hrs.; $0	0 hrs.; $0	0
Total	.....	.....	.....	.....	100 hrs.; $7,900	1,580

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06975 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–3–000]

Gulf South Pipeline Company, LP; Notice of Availability of the Environmental Assessment for the Proposed Petal III Compression Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) for the Petal III Compression Project, proposed by Gulf South Pipeline Company, LP. (Gulf South) in the above-referenced docket. Gulf South requests authorization to construct, operate, and maintain two new electric-driven 5,000 horsepower compressor units, within the existing Petal III Compressor Station (Petal III CS) building and add a new dehydration unit, thermal oxidizer, and other auxiliary, appurtenant facilities adjacent to the Petal III CS building in Forrest County, Mississippi.

The EA assesses the potential environmental effects of the construction and operation of the project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP19–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on May 3, 2019.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to

[4] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[5] The Commission staff believes the FERC FTE (full-time equivalent) average salary plus benefits is representative of wages for the industry respondents. The FERC 2018 average salary plus benefits for one FERC FTE is $164,820/year (or $79.00/hour). (This is an update to the cost figures used in the 60-day Notice.)

Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–3–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06974 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2487–005; ER15–2380–003.

Applicants: Pacific Summit Energy LLC, Willey Battery Utility, LLC.

Description: Notice of Change in Status of Pacific Summit Energy LLC, et al.

Filed Date: 4/1/19.

Accession Number: 20190401–5685.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER18–552–002.

Applicants: Clean Energy Future—Lordstown, LLC.

Description: Notice of Non-Material Change in Status of Clean Energy Future—Lordstown, LLC.

Filed Date: 4/1/19.

Accession Number: 20190401–5683.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1420–001.

Applicants: California Independent System Operator Corporation.

Description: Tariff Amendment: 2019–04–02 DTBAOA with Gridforce—Expedite Effective Date to be effective 4/12/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5153.

Comments Due: 5 p.m. ET 4/12/19.

Docket Numbers: ER19–1511–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and LCEC Amendments to Rate Schedule FERC No. 317 to be effective 4/1/2018.

Filed Date: 4/2/19.

Accession Number: 20190402–5197.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1512–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and FKEC Amendments to Rate Schedule FERC No. 322 to be effective 4/1/2018.

Filed Date: 4/2/19.

Accession Number: 20190402–5198.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1513–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: Appendix XII Cycle 1 Formula Rate to be effective 6/1/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5210.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1514–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Southern Power (Taylor County Solar Facility II–100MW) LGIA Termination Filing to be effective 4/3/2019.

Filed Date: 4/3/19.

Accession Number: 20190403–5044.

Comments Due: 5 p.m. ET 4/24/19.

Docket Numbers: ER19–1516–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: E&P Agreement for Vistra Energy Corporation to be effective 4/4/2019.

Filed Date: 4/3/19.

Accession Number: 20190403–5097.

Comments Due: 5 p.m. ET 4/24/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06972 Filed 4–8–19; 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: RP19–1023–000.

Applicants: MIGC LLC.

Description: Compliance filing NAESB V3.1 (Order No. 587–Y) Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5020.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1029–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: § 4(d) Rate Filing: Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5103.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1030–000.
Applicants: American Midstream (Midla), LLC.
Description: § 4(d) Rate Filing: Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5110.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1031–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5118.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1032–000.
Applicants: High Point Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5120.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1033–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: § 4(d) Rate Filing: Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5121.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1034–000.
Applicants: DBM Pipeline, LLC.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5193.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1035–000.
Applicants: KPC Pipeline, LLC.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5194.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1036–000.
Applicants: MarkWest New Mexico, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5195.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1037–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5196.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1038–000.
Applicants: NGO Transmission, Inc.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5197.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1039–000.
Applicants: Venice Gathering System, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5198.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1040–000.
Applicants: Hardy Storage Company, LLC.
Description: § 4(d) Rate Filing: RAM 2019 to be effective 5/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5199.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1041–000.
Applicants: B–R Pipeline Company.
Description: Compliance filing Order 587–Y Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5202.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1042–000.
Applicants: USG Pipeline Company, LLC.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5216.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1043–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: OTRA—Summer 2019 to be effective 5/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5220.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1044–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: Compliance filing NAESB 3.1 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5223.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1045–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Compliance filing NAESB Version 3.1 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5224.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1046–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: Negotiated Rate Agmt—Sequent to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5225.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1047–000.
Applicants: ANR Pipeline Company.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5235.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1048–000.
Applicants: Great Lakes Gas Transmission Limited Parnership.
Description: § 4(d) Rate Filing: SEMCO Negotiated Rate Agreement to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5242.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1049–000.
Applicants: Discovery Gas Transmission LLC.
Description: Compliance filing NAESB 3.1 Compliance (Order No. 587Y) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5267.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1050–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Compliance filing Order No. 587–Y NAESB 3.1 Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5294.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1051–000.
Applicants: National Grid LNG, LLC.
Description: Compliance filing Order 587–Y Compliance Filing Adopting NAESB WQC Version 3.1 to be effective 8/1/2019.

Filed Date: 4/1/19.
Accession Number: 20190401–5296.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1052–000.
Applicants: Dauphin Island Gathering Partners.
Description: Compliance filing Order No. 587–Y NAESB 3.1 Compliance to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5297.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1053–000.
Applicants: WTG Hugoton, LP.
Description: Compliance filing Order No. 587–Y Compliance (NAESB Version 3.1) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5298.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1054–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Macquarie Energy contract 510932 to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5299.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1055–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No.2—Neg Rate Agmt—BKV SP338731 and SP339297 to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5361.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1056–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Compliance filing NAESB Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5398.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1057–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing NAESB Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5399.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1058–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5400.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1059–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Gulfport 34959, 35446 to Eco-Energy 37888, 37889) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5401.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1060–000.
Applicants: WBI Energy Transmission, Inc.
Description: Compliance filing 2019 NAESB Compliance Filing with Order No. 587–Y to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5402.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1061–000.
Applicants: ANR Storage Company.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5403.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1062–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing NAESB Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5406.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1063–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts (Aethon 37657, 50488) to be effective 3/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5407.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1064–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5416.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1065–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (FPL 41618 to DTE 50800) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5435.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1066–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Trans Louisiana 50890 to CenterPoint 50900) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5442.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1067–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Petrohawk releases eff 4–1–2019) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5449.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1068–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Pensacola 43993 to BP 50937) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5456.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1069–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (JERA 46435 amendment; 46435, 46434 to EDF 50842, 50843) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5457.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1070–000.
Applicants: Western Gas Interstate Company.
Description: Compliance filing Order No. 587–Y Compliance (NAESB Version 3.1) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5458.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1071–000.
Applicants: Portland General Electric Company.
Description: Compliance filing NAESB V3.1 Standards Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5462.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1072–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Compliance filing NAESB Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5465.
Comments Due: 5 p.m. ET 4/15/19.
Docket Numbers: RP19–1073–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (BP 37) to be effective 4/1/2019.
Filed Date: 4/1/19.

Accession Number: 20190401–5466.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1074–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Perm Release Neg Rate Agmt (Newfield 18 to Encana 2075) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5467.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1075–000.
Applicants: Blue Lake Gas Storage Company.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5468.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1076–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Panda Sherman 624 to NextEra 2078) to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5469.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1077–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to Negotiated Rate Agreement—Macquarie Energy to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5470.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1078–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Morgan Stanley Capital Group to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5472.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1079–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Seven Generations to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5473.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1080–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to Negotiated Rate Agreement—Tenaska Marketing Ventures to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5477.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1081–000.
Applicants: Bluewater Gas Storage, LLC.
Description: Compliance filing Bluewater NAESB Version 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5480.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1082–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Termination and Mutual Extension of Existing Service Agreements to be effective 5/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5486.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1083–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: § 4(d) Rate Filing: Statement of Negotiated Rates V. 15 Summit Energy to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5494.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1084–000.
Applicants: KO Transmission Company.
Description: Compliance filing Compliance Filing under Order No. 587–Y to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5511.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1085–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5521.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1086–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—4/1/2019 to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5561.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1087–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—April 2019 to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5567.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1088–000.
Applicants: Enable Gas Transmission, LLC.
Description: Compliance filing EGT NAESB 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5569.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1089–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2019 Negotiated Rate Service Agreement—Kentex to be effective 4/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5570.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1090–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: Compliance filing Order 587–Y (NAESB) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5571.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1091–000.
Applicants: American Midstream (Midla), LLC.
Description: Compliance filing Order No. 587–Y (NAESB) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5576.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1092–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: Compliance filing Order No. 587–Y (NAESB) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5577.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1093–000.
Applicants: High Point Gas Transmission, LLC.
Description: Compliance filing Order No. 587–Y (NAESB) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5581.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1094–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Compliance filing Order No. 587–Y (NAESB) to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5588.
Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1095–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Compliance filing NAESB 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 4/1/19.
Accession Number: 20190401–5594.

Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1096–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing—Effective May 1, 2019 to be effective 5/1/2019.

Filed Date: 4/1/19.

Accession Number: 20190401–5597.

Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–1097–000.

Applicants: WestGas InterState, Inc.

Description: Compliance filing WGI Order No 587–Y Compliance Filing_ RP19-__to be effective 8/1/2019.

Filed Date: 4/1/19.

Accession Number: 20190401–5599.

Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–51–003.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Compliance filing Bear Creek Cost and Revenue Study Compliance Filing in RP19–51.

Filed Date: 4/1/19.

Accession Number: 20190401–5192.

Comments Due: 5 p.m. ET 4/15/19.

Docket Numbers: RP19–710–001.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing Golden Pass Pipeline LLC Supplement to 2019 Annual Retainage Report.

Filed Date: 4/1/19.

Accession Number: 20190401–5404.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–78–004.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing PEPL Cost and Revenue Study in Compliance with RP19–78–000.

Filed Date: 4/1/19.

Accession Number: 20190401–5410.

Comments Due: 5 p.m. ET 4/15/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 2, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06936 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–42–000.

Applicants: Electric Energy, Inc., GridLiance Heartland LLC.

Description: Response to February 28, 2019 Deficiency Letter, et al. of Electric Energy, Inc. and GridLiance Heartland LLC.

Filed Date: 4/1/19.

Accession Number: 20190401–5677.

Comments Due: 5 p.m. ET 4/22/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–354–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2019–04–01 Generator Contingency Rememedial Action Scheme Compliance to be effective 3/1/2019.

Filed Date: 4/1/19.

Accession Number: 20190401–5568.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1058–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Report Filing: 2019–04–01 Supplement to Revisions to Attachment FF–4 and VV to add Henderson to be effective N/A.

Filed Date: 4/1/19.

Accession Number: 20190401–5474.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1100–001.

Applicants: SEPV Mojave West, LLC.

Description: Tariff Amendment: SFA to be effective 2/23/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5002.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1215–001.

Applicants: Cricket Valley Energy Center, LLC.

Description: Tariff Amendment: Amendment to Application for Market-Based Rate Authorization to be effective 5/8/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5135.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1502–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: LP&L Transaction Agreement Update—6/1/2019 to be effective 6/1/2019.

Filed Date: 4/1/19.

Accession Number: 20190401–5564.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1503–000.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.

Description: § 205(d) Rate Filing: 2019–04–01_Entergy OpCos Attachment O Revisions Regarding ADIT to be effective 6/1/2019.

Filed Date: 4/1/19.

Accession Number: 20190401–5566.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1504–000.

Applicants: San Diego Gas & Electric Company, Energia Sierra Juarez U.S., LLC.

Description: Joint Application for Approval of Affiliate Transaction Pursuant to Section 205 of the Federal Power Act of San Diego Gas & Electric Company, et al.

Filed Date: 3/29/19.

Accession Number: 20190329–5533.

Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1505–000.

Applicants: NorthWestern Corporation.

Description: Request for Limited Waiver of Filed Tariff Provision of NorthWestern Corporation.

Filed Date: 4/1/19.

Accession Number: 20190401–5637.

Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1506–000.

Applicants: Minonk Wind, LLC.

Description: Baseline eTariff Filing: Reactive Power Rate Schedule to be effective 6/1/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5062.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1507–000.

Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: Compliance filing: Joint OATT LGIP Amendments—Order 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 4/2/19.

Accession Number: 20190402–5064.

Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1508–000.

Applicants: Public Service Company of New Mexico.

Description: Formula Rate Post-employment Benefits Other than Pensions filing of Public Service Company of New Mexico.

Filed Date: 4/1/19.

Accession Number: 20190401–5659.
Comments Due: 5 p.m. ET 4/22/19.

Docket Numbers: ER19–1509–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–04–02_SA 3294 Cooperative Energy—Cooperative Energy GIA (J888) to be effective 3/19/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5149.
Comments Due: 5 p.m. ET 4/23/19.

Docket Numbers: ER19–1510–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA/SA No. 4469; Queue No. AA1–106 to be effective 2/2/2019.
Filed Date: 4/2/19.
Accession Number: 20190402–5167.
Comments Due: 5 p.m. ET 4/23/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF19–755–000; QF19–756–000.
Applicants: USPS LA Solar FiT ''A'', LLC, USPS LA Solar FiT ''B'', LLC.
Description: Refund Report of USPS LA Solar FiT ''A'', LLC and USPS LA Solar FiT ''B'', LLC, et al.
Filed Date: 4/1/19.
Accession Number: 20190401–5657.
Comments Due: 5 p.m. ET 4/22/19.
Docket Numbers: QF19–1028–000.
Applicants: Rousselot, Inc.
Description: Form 556 of Rousselot, Inc.
Filed Date: 3/29/19.
Accession Number: 20190329–5532.
Comments Due: None-Applicable.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM19–2–000.
Applicants: Midwest Energy, Inc.
Description: Application of Midwest Energy, Inc. to Terminate Mandatory PURPA Purchase Obligation.
Filed Date: 4/1/19.
Accession Number: 20190401–5669.
Comments Due: 5 p.m. ET 4/29/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 2, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06934 Filed 4–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposed Fiscal Year 2020 Boulder Canyon Project Base Charge and Rates for Electric Service.

SUMMARY: Western Area Power Administration (WAPA) is proposing the base charge and rates for fiscal year (FY) 2020 Boulder Canyon Project (BCP) electric service under Rate Schedule BCP–F10. The proposal would reduce the base charge 2.6 percent from $69.7 million in FY 2019 to $67.9 million for FY 2020. The reduction is primarily the result of an increase in revenue projections for the Hoover Dam visitor center and a decrease in WAPA's budget. The proposed base charge and rates would go into effect on October 1, 2019, and remain in effect through September 30, 2020. Publication of this **Federal Register** notice will initiate the public process.

DATES: The consultation and comment period begins today and will end July 8, 2019. WAPA will present a detailed explanation of the proposed FY 2020 base charge and rates at a public information forum that will be held on May 9, 2019, from 10:30 a.m. to 12:30 p.m. in Phoenix, Arizona. WAPA will also host a public comment forum held on June 10, 2019, from 10:30 a.m. to 12:30 p.m. in Phoenix, Arizona. WAPA will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at WAPA's Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Send written comments to Mr. Ronald E. Moulton, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, or email *dswpwrmrk@wapa.gov.* WAPA will post information concerning the rate process and written comments received on its website at *https://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

As access to WAPA facilities is controlled, any U.S. citizen wishing to attend a meeting held at WAPA must present an official form of picture identification (ID), such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. military ID, at the time of the meeting. Foreign nationals should contact Ms. Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, at (602) 605–2565 or email at *dswpwrmrk@wapa.gov* in advance of a meeting to obtain the necessary form for admittance to the Desert Southwest Customer Service Regional Office.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2565, or *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: Hoover Dam,[1] authorized by the Boulder Canyon Project Act of 1928, as amended (43 U.S.C. 617 *et seq.*), sits on the Colorado River along the Arizona-Nevada border. Hoover Dam's power plant has 19 generating units (two for plant use) and an installed capacity of 2,078.8 megawatts (4,800 kilowatts for plant use). In collaboration with the Bureau of Reclamation (Reclamation), WAPA markets and delivers hydropower from Hoover Dam's power plant through high-voltage transmission lines and substations to Arizona, Southern California, and Southern Nevada.

The rate-setting methodology for BCP calculates an annual base charge rather than a unit rate for Hoover Dam hydropower. The base charge recovers an annual revenue requirement that includes projected costs of investment repayment, interest, operations, maintenance, replacements, payments to States, and Hoover Dam visitor services. Non-power revenue projections such as water sales, Hoover Dam visitor revenue, ancillary services, and late fees help offset these projected costs. Customers are billed a percentage of the base charge in proportion to their Hoover power allocation. A unit rate is calculated for comparative purposes but

[1] Hoover Dam was known as Boulder Dam from 1933 to 1947, but was renamed Hoover Dam by an April 30, 1947, joint resolution of Congress.

is not used to determine the charges for service.

On June 6, 2018, the Federal Energy Regulatory Commission (FERC) confirmed and approved Rate Schedule BCP–F10 for a five-year period ending September 30, 2022.[2] Rate Schedule BCP–F10 and the BCP Electric Service Agreement require WAPA to determine the annual base charge and rates for the next fiscal year before October 1 of each year. The FY 2019 BCP base charge and rates expire on September 30, 2019.

COMPARISON OF BASE CHARGE AND RATES

	FY 2019	FY 2020	Amount change	Percent change
Base Charge ($)	$69,741,657	$67,929,402	−$1,812,255	−2.6
Composite Rate (mills/kWh)	18.92	19.64	0.72	3.8
Energy Rate (mills/kWh)	9.46	9.82	0.36	3.8
Capacity Rate ($/kW-Mo)	$1.88	$1.83	−$0.05	−2.6

Reclamation's FY 2020 budget is increasing by $4.3 million to $76.3 million, a 6 percent increase from FY 2019. Higher operations and maintenance expenses ($2.2 million) and replacement costs ($1.4 million) account for most of this increase. The primary drivers of these increases include higher salaries and higher security, hardware, software, and project costs. The rate impact of these increases to Reclamation's budget are offset by an increase in non-power revenue projections ($5.1 million), primarily resulting from the resumption of typical revenues following completion of the Hoover Dam visitor center renovations, and prior year carryover ($400,000).

WAPA's FY 2020 budget is decreasing $600,000 to $8.7 million, a 6.5 percent reduction from FY 2019, due to a reduction in dispatching and substation maintenance expenses ($400,000) and a decrease in replacement costs ($200,000).

Although the base charge is decreasing, projections for the FY 2020 composite and energy rates are increasing 3.8 percent due to a forecast of poor hydrological conditions. Capacity projections, which will be updated June 1, 2019, currently reflect a 2.6 percent reduction.

This proposal, to be effective October 1, 2019, is preliminary and subject to change based on modifications to forecasts before publication of the final base charge and rates.

Legal Authority

The proposed action constitutes a major rate adjustment as defined by 10 CFR 903.2(e). Pursuant to 10 CFR 903.15 and 903.16, WAPA will hold public information and public comment forums for this rate adjustment. WAPA will review and consider all timely public comments and adjust the proposal, as appropriate, at the conclusion of the consultation and comment period.

WAPA is establishing rates for BCP electric service in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This provision transferred to, and vested in, the Secretary of Energy certain functions of the Secretary of the Interior, along with the power marketing functions of Reclamation. Those functions include actions that specifically apply to the BCP.

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place into effect such rates on an interim basis to the Deputy Secretary of Energy; [3] and (3) the authority to confirm, approve and place into effect on a final basis, or to remand or disapprove such rates, to FERC.

Availability of Information

All studies, comments, letters, memorandums, and other documents WAPA prepares or uses to develop the proposed base charge and rates will be available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Many of these documents and supporting information are available on WAPA's website at *https://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality implementing NEPA (40 CFR parts 1500–1508), and DOE's NEPA Implementing Procedures and Guidelines (10 CFR part 1021), WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: March 29, 2019.

Mark A. Gabriel,

Administrator.

[FR Doc. 2019–07025 Filed 4–8–19; 8:45 am]

BILLING CODE 6450–01–P

[2] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF18–1–000, 163 FERC ¶ 62,154 (2018).

[3] Notwithstanding the delegating paragraph 1.2's statement that ''[t]his authority may not be redelegated,'' in subparagraph 1.18 A. of Delegation Order No. 00–002.00Q, effective November 1, 2018, the Secretary of Energy also delegated to the Under Secretary of Energy the authority to confirm, approve, and place into effect on an interim basis power and transmission rates for WAPA.

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 18–272; DA 19–179]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice of availability.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau announces the availability of the FCC order terminating, as dormant, certain docketed Commission proceedings.

DATES: The dockets are terminated as of April 9, 2019.

FOR FURTHER INFORMATION CONTACT: Daniel Margolis, Consumer and

Governmental Affairs Bureau at (202) 418–1377 or by email at *daniel.margolis@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission's Order, *Termination of Certain Proceedings as Dormant,* document DA 19–179, adopted on March 13, 2019, and released on March 13, 2019, is available in CG Docket No. 18–272. The full text of document DA 19–179, the spreadsheet associated with document DA 19–179 listing the proceedings terminated as dormant, and copies of any documents filed in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of these documents and any documents filed in this matter may also be found by searching ECFS at: *https://www.fcc.gov/ecfs/.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Daniel Margolis,

Acting Legal Advisor, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–06964 Filed 4–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jean M. Humphrey, Kathleen A. McKillip, Henry W. Merschman, and Joseph H. Merschman, all of Fort Madison, Iowa; and George A. Merschman, Rochester, Illinois, together as a group acting in concert,* to retain voting shares of Lee Capital Corp, and thereby retain shares of Lee County Bank, both of Fort Madison, Iowa.

Board of Governors of the Federal Reserve System, April 4, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–07017 Filed 4–8–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Discover Financial Services, Riverwoods, Illinois;* to acquire voting shares of DFS Bank, New Castle, Delaware a de novo bank.

Board of Governors of the Federal Reserve System, April 4, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–07013 Filed 4–8–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314).

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: You may submit comments, identified by *FR 4201,* 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 in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk

Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the 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 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 PRA to approve 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 Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information 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 Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Market Risk Capital Rule.

Agency form number: FR 4201.

OMB control number: 7100–0314.

Frequency: Reporting, annually; Recordkeeping, annually; Disclosure, annually and quarterly.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), and state member banks (SMBs) that meet certain risk thresholds. The market risk rule applies to any such banking organization with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.[1]

Estimated number of respondents: 37.

Estimated average hours per response: Reporting, 1,088; Recordkeeping, 220; Disclosure, 68.

Estimated annual burden hours: 13,148.

General description of report: The market risk rule, which requires banking organizations to hold capital to cover their exposure to market risk, is an important component of the Board's regulatory capital framework (12 CFR part 217; Regulation Q). The Board may exclude a banking organization that is subject to the market risk rule if the Board determines that the exclusion is appropriate based on the level of market risk of the banking organization and is consistent with safe and sound banking practices.[2] The Board may further apply the market risk rule to any other banking organization if the Board deems it necessary or appropriate because of the level of market risk of the banking organization or to ensure safe and sound banking practices.[3]

The Board's market risk rule requires a subject banking organization to obtain the approval of the Board prior to (1) using any internal model to calculate its risk-based capital requirements under subpart F of the Board's Regulation Q; (2) including in its capital requirement for *de minimis* exposures the capital requirement for any *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures; (3) including portfolios of equity positions in its incremental risk model if the banking organization measures the specific risk of a portfolio of debt positions using internal models; or (4) using the method specified in section 209(a) of Regulation Q to measure comprehensive risk for one or more portfolios of correlation trading positions. A subject banking organization also must obtain the prior approval of the Board for, and notify the Board if the banking organization makes any material changes to, the policies and procedures required by section 206(b)(3) of Regulation Q. Further, the market risk rule requires subject banking organizations to (1) have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and which trading positions are correlation trading positions; (2) have clearly defined trading and hedging strategies for trading positions; (3) retain certain financial and statistical information regarding the institution's Board-approved subportfolios of its portfolio exposures subject to the market risk rule; (4) have a formal disclosure policy that addresses the banking organization's approach for determining the market risk disclosures; and (5) make certain public quantitative disclosures.

The collections of information provide current statistical data identifying market risk areas on which to focus onsite and offsite examinations. They also allow the Board to assess the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk rule. Finally, these collections of information ensure capital adequacy of banking organizations according to their level of market risk and assist the Board in implementing and validating the market risk framework. There are no required reporting forms associated with this information collection.

Proposed revisions: The Board proposes to revise the collections of information associated with the market risk rule to include the prior approvals a banking organization must obtain from the Board required by sections 217.203(c)(1) and 217.204(a)(2)(vi)(B) of the Board's Regulation Q.

[1] 12 CFR 217.201(b)(1).

[2] 12 CFR 217.201(b)(3).

[3] 12 CFR 217.201(b)(2).

Legal authorization and confidentiality: The recordkeeping provisions of the Market Risk Capital Rule are authorized to be collected from SMBs pursuant to sections 9(6) and 11 of the Federal Reserve Act; [4] from BHCs pursuant to section 5(c) of the Bank Holding Company Act (BHC Act) [5] and, in some cases, section 165 of the Dodd-Frank Act; [6] from foreign banking organizations (FBOs) pursuant to section 8(a) of the International Banking Act [7] and section 165 of the Dodd-Frank Act; and from SLHCs pursuant to section 10(b)(2) and (g) of the Home Owners' Loan Act (''HOLA'').[8] Sections 9(6) and 11 of the Federal Reserve Act authorize the Board to require state member banks to submit reports, as necessary. Section 5(c) of the BHC Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition, and section 8(a) of the International Banking Act subjects FBOs to the provisions of the BHC Act. Section 10 of HOLA authorizes the Board to collect reports from SLHCs.

The information collections under FR 4201 are mandatory. The information collected through the FR 4201 is collected as part of the Board's supervisory process, and therefore is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (''FOIA'').[9] In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of FOIA if the data has not previously been publically disclosed and the release of the data would likely cause substantial harm to the competitive position of the respondent.[10] Determinations of confidentiality based on exemption 4 of FOIA would be made on a case-by-case basis.

Consultation outside the agency: The Board has consulted with the Federal Deposit Insurance Corporation and the Office of the Comptroller of Currency in confirming the burden estimates listed.

Board of Governors of the Federal Reserve System, April 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–06991 Filed 4–8–19; 8:45 am]

BILLING CODE 6210–01–P

[4] 12 U.S.C. 324 and 248(a).

[5] 12 U.S.C. 1844(c).

[6] 12 U.S.C. 5365.

[7] 12 U.S.C. 3106(a).

[8] 12 U.S.C. 1467a(b)(2) and (g).

[9] 5 U.S.C. 552(b)(8).

[10] 5 U.S.C. 552(b)(4).

FEDERAL TRADE COMMISSION

[File No. 172 3028]

UrthBox, Inc. and Behnam Behrouzi; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 9, 2019.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Urthbox, Inc.'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kerry O'Brien (415–848–5100), Western Region, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Proposed Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2019), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 9, 2019. Write ''Urthbox, Inc.; File No. 1723028'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Urthbox, Inc.; File No. 1723028'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 9, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order as to UrthBox, Inc. (''UrthBox'') and Benham Behrouzi (''respondents'').

The proposed consent order (''order'') has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves respondents' endorsement and marketing practices relating to UrthBox's snack box subscription service. UrthBox has offered consumers monthly subscriptions (one-, three-, and six-month subscriptions) to receive its snack boxes. Urthbox has required its customer to pre-pay the entire cost of the subscription term.

The complaint alleges that respondents violated Section 5(a) of the FTC Act by misrepresenting that positive customer reviews of UrthBox and its snack boxes on the Better Business Bureau's website and other third-party websites reflected the independent experiences or opinions of impartial customers, and by deceptively failing to disclose that some of those customers received compensation, including free snack boxes, to post those positive reviews. The complaint also alleges that respondents violated Section 5(a) of the FTC Act and Section 4 of the Restore Online Shoppers Confidence Act (''ROSCA'') by failing to adequately disclose key terms of its ''free'' snack box offer to prospective customers. Specifically, when the free trial period expired, UrthBox would automatically enroll consumers in a six-month subscription plan and would charge them the total amount owed for six months of shipments of snack boxes. The complaint also alleges that respondents violated ROSCA by failing to obtain consumers' express informed consent prior to charging them for that ongoing subscription.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct.

Part I prohibits misrepresenting an endorser of any good or service is an independent user or ordinary consumer of the good or service.

Part II prohibits respondents from making misrepresentations in connection with the marketing or sale of any good or service with a negative option feature. The order defines the term ''Negative Option Feature.''

Part III prohibits any representation about any consumer, reviewer, or other endorser of any good or service without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and (1) any respondent, (2) any other individual or entity affiliated with the good or service, or (3) the good or service. The order defines the terms ''Clearly and Conspicuously'' and ''Unexpected Material Connection.''

Part IV requires respondents to take all reasonable steps to remove any demonstration, review, or endorsement, by any endorser with a material connection to any respondent, of any good or service currently viewable by the public that does not comply with Provisions I and III.

Part V requires respondents, when they use endorsers to advertise or sell a good or service, to take certain steps to make sure the endorsements comply with Parts I and III of the order. Such steps include clearly notifying endorsers of their representation and disclosure responsibilities and creating a monitoring system to review endorsements and disclosures.

Part VI requires respondents to make certain disclosures when they market or sell any good or service with a negative option feature.

Part VII prohibits respondents from using billing information to obtain payment for a good or service with a negative option feature without first obtaining the consumer's express informed consent to do so. The order describes the steps respondents must take to obtain that expressed informed consent and also defines the term ''Billing Information.''

Part VIII requires respondents to provide consumers with a simple mechanism to avoid charges for a good or service with a negative option feature. The order describes what constitutes a simple mechanism, including that such mechanism must not be difficult, costly, confusing, or time consuming, and must be at least as simple as the mechanism the consumer used to initiate the charge.

Parts IX and X require the corporate respondent, UrthBox, Inc., to pay $100,000 to the Commission, which the Commission will use to administer a fund for relief, including consumer redress unless direct redress to consumers is impracticable.

Part XI requires respondents to provide customer information to the Commission so that it may efficiently administer consumer redress.

Parts XII to XVI are reporting and compliance provisions. Part XII requires respondents to distribute the order to certain persons and submit signed acknowledgments of order receipt. Part XIII requires respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. Part XIV contains recordkeeping requirements for personnel records, advertising and marketing materials, and all records necessary to demonstrate compliance with the order. Part XV contains other requirements related to the Commission's monitoring of the respondents' order compliance. Part XVI provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint

or order, or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–06956 Filed 4–8–19; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0303; Docket No. 2019–0001; Sequence No. 7]

Submission to OMB for Review; General Services Administration Acquisition Regulation; Administrative Changes

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No. 3090–0303, Administrative Changes.

DATES: *Submit comments on or before:* May 9, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503.

Additionally submit a copy to GSA by any of the following methods:

- Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0303, Administrative Changes.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0303, Administrative Changes'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0303, Administrative Changes.

Instructions: Please submit comments only and cite Information Collection 3090–0303, Administrative Changes in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, General Services Acquisition Policy Division, GSA, by phone at 202–357–9652 or by email at *dana.bowman@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of information used by FAS to evaluate vendors' offers, ordering activities when placing orders against the contract, and other FSS vendors to conduct market research when submitting proposals.

A request for public comments published in the **Federal Register** at 79 FR 54125 on September 10, 2014 as part of a proposed rule under GSAR case 2013–G502.

Three comments were received on the Information Collection (IC). The comments received questioned the impact and methodologies used to calculate burden estimates. In response, GSA provided clarification explaining the impact and the methodologies used to calculate burden estimates. The calculated burden estimates did not change as a result of the comments. Full responses to the inquiries are included in the Final Rule publication.

B. Annual Reporting Burden

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply because the final rule contains eight (8) clauses and provisions with information collection requirements. However, one of the clauses does not impose additional information collection requirements to the paperwork burden previously approved under existing OMB Control Number. The remaining seven (7) clauses and provisions involve information collection requirements that have not previously been approved by OMB.

The annual total public reporting burden for this collection of information is estimated to be 38,674 total hours ($1,819,998.44), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Annual reporting burdens include the estimated respondents with one (1) submission per respondent multiplied by preparation hours per response to get the total response burden hours.

The reinstated GSAR clause 552.238–84 *Discounts for Prompt Payment* requires the offeror to provide the Government a discount for early payment, if applicable.

Respondents: 14,674.
Responses per respondent: 1.
Total annual responses: 14,674.
Preparation hours per response: 1.0 (1 hr.).
Total response burden hours: 14,674.
Cost per hour: $47.06.
Estimated cost burden to the public: $690,558.44.

The new GSAR clause 552.238–87 *Delivery Prices* requires the offeror to identify the intended geographic area(s)/countries/zones that are to be covered.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–95 *Separate Charge for Performance Oriented Packaging* requires the offeror to list any separate charge for preservation, packaging, packing and marking, and labeling of domestic and overseas HAZMAT surface shipments.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–96 *Separate Charge for Delivery within Consignee's Premises* requires the offeror to list any separate cost for shipping when the delivery is within the consignee's premises (inclusive of items that are comparable in size and weight).

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–97 *Parts and Service* requires the offeror to include in the price list, the names and addresses of all supply and service

points maintained in the geographic area in which the offeror will perform, whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 4,000.

Cost per hour: $47.06.

Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–99 *Delivery Prices Overseas* requires the offeror to identify the intended geographic area(s)/countries/zones which are to be covered.

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 4,000.

Cost per hour: $47.06.

Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–111 *Environmental Protection Agency Registration Requirement* requires the offeror to list the manufacturers' and/or distributors' name and EPA Registration Number for each item requiring registration with the EPA.

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 4,000.

Cost per hour: $47.06.

Estimated cost burden to the public: $188,240.00.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0303, Administrative Changes, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–06951 Filed 4–8–19; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0283; Docket No. 2019–0001; Sequence No. 3]

Information Collection; Contractor Information Worksheet; GSA Form 850

AGENCY: Identity, Credential, and Access Management (ICAM) Division, Office of Security, Office of Mission Assurance (OMA), General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement, with changes, expanding the coverage of the information collection of the Contractor Information Worksheet; GSA Form 850.

GSA requires OMB approval for this collection to make determinations on granting unescorted physical access to GSA-controlled facilities and/or logical access to GSA-controlled information systems. The approval is critical for GSA to continue following contractor onboarding processes required for working on GSA contracts.

DATES: Submit comments on or before: June 10, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0283, Contractor Information Worksheet; GSA Form 850''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0283, Contractor Information Worksheet; GSA Form 850'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0283, Contractor Information Worksheet; GSA Form 850.

Instructions: Please submit comments only and cite Information Collection 3090–0283, Contractor Information Worksheet; GSA Form 850, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Phil Ahn, Deputy Director, OMA Identity Credential and Access Management Division, GSA, telephone 202–501–2447 or via email at *phillip.ahn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The U.S. Government conducts criminal checks to establish that applicants or incumbents working for the Government under contract may have unescorted access to federally controlled facilities. GSA uses the Contractor Information Worksheet; GSA Form 850, and digitally captured fingerprints to conduct a FBI National Criminal Information Check (NCIC) for each contractor's physical access determination to GSA-controlled facilities and/or logical access to GSA-controlled information systems. Manual fingerprint card SF–87 is used for exception cases such as contractor's significant geographical distance from fingerprint enrollment sites.

The Office of Management and Budget (OMB) Guidance M–05–24 for Homeland Security Presidential Directive (HSPD) 12, authorizes Federal departments and agencies to ensure that contractors have limited/controlled access to facilities and information systems. GSA Directive CIO P 2181.1 Homeland Security Presidential Directive-12, Personal Identity Verification and Credentialing (available at *http://www.gsa.gov/hspd12*), states that GSA contractors must undergo a

minimum of an FBI National Criminal Information Check (NCIC) to receive unescorted physical access to GSA-controlled facilities and/or logical access to GSA-controlled information systems.

Contractors' Social Security Number is needed to keep records accurate, because other people may have the same name and birth date. Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons, also allows Federal agencies to use this number to help identify individuals in agency records.

B. Annual Reporting Burden

Respondents: 25,000.
Responses per Respondent: 1.
Total Annual Responses: 25,000.
Hours per Response: .25.
Total Burden Hours: 6,250.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0283, Contractor Information Worksheet; GSA Form 850 in all correspondence.

The form can be downloaded from the GSA Forms Library at *http://www.gsa.gov/forms.* Type GSA 850 in the form search field.

Dated: April 1, 2019.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–06913 Filed 4–8–19; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274; Docket No. 2019–0001; Sequence No. 2]

Information Collection; Public Buildings Service; Art-in-Architecture Program National Artist Registry, GSA Form 7437

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Art-in Architecture Program National Artist Registry, GSA Form 7437.

DATES: Submit comments on or before June 10, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry, GSA Form 7437''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry, GSA Form 7437'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0274, Art-in-Architecture Program National Artist Registry, GSA Form 7437.

Instructions: Please submit comments only and cite Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry, GSA Form 7437, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gibson, Office of the Chief Architect, Art-in-Architecture & Fine Arts Division (PCAC), 1800 F Street NW, Room 5400 PCAC, Washington, DC 20405, at telephone 202–501–0930 or via email at *jennifer.gibson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art-in-Architecture Program actively seeks to commission works from the full spectrum of American artists and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art-in-Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

The Art-in-Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator Bernard L. Boudin, who served on the Ad Hoc Committee on Federal Office Space in 1961–1962.

The program has been modified over the years, most recently in 2009, when a requirement was instituted that all artists who want to be considered for any potential GSA commission must be included on the National Artists Registry, which serves as the qualified list of eligible artists. The program continues to commission works of art from living American artists. One-half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

B. Annual Reporting Burden

Respondents: 300.
Responses per Respondent: 1.
Total Responses: .25.
Hours per Response: .25.
Total Burden Hours: 75.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration,

Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, GSA Form 7437, in all correspondence.

Dated: April 1, 2019.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–06914 Filed 4–8–19; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Disaster Information Collection Form.

OMB No.: 0970–0476.

Description: This is a request by the Administration for Children and Families (ACF) for an extension to a generic clearance for the Disaster Information Collection Form. A generic clearance is necessary because each of the thirteen program offices within ACF has a slightly different need for information about program impact information collection during a disaster.

ACF oversees more than 60 programs that affect the normal day to day operations of families, children, individuals and communities in the United States. Many of these programs encourage grantees or state administrators to develop emergency preparedness plans, but do not have statutory authority to require these plans be in place. ACF facilitates the inclusion of emergency preparedness planning and training efforts for ACF programs.

Presidential Policy Directive-8 (PPD–8) provides federal guidance and planning procedures under established phases—protection, preparedness, response, recovery, and mitigation. The Disaster Information Collection Forms addressed in this clearance process provide assessment of ACF programs in disaster response, and recovery.

ACF/Office of Human Services Emergency Preparedness and Response (OHSEPR) has a requirement under PPD–8, the National Response Framework, and the National Disaster Recovery Framework to report disaster impacts to ACF-supported human services programs to the HHS Secretary's Operation Center (SOC) and interagency partners. ACF/OHSEPR works in partnership with the Assistant Secretary for Preparedness and Response (ASPR), and the Federal Emergency Management Agency (FEMA) to report assessments of disaster impacted ACF programs and the status of continuity of services and recovery.

Respondents: State administrators, and/or ACF grantees.

Annual Burden Estimates: The burden estimate is for approximately 10 state administrators, or grantees to go through all of the applicable questions on each individual form with the Regional and Central Office staff. Some ACF programs may have more questions and may have more respondents. Total burden is based on the number of submissions during the first three years of approval.

Instrument	Number of respondents	Number of responses per respondent	Burden hours per response	Total burden hours
Disaster Information Collection Form	50	1	1.5	75

An estimate of the number of disasters that would warrant data collection is difficult to calculate due to the unpredictable nature of disasters. For example, in 2012, there were 95 disasters nationwide but OHSEPR did not collect data on all of them because they had minimal effects on ACF programs.

Additional Information: Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–06945 Filed 4–8–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0661]

Modifications to Compliance Policy for Certain Deemed Tobacco Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the draft guidance for industry entitled ''Modifications to Compliance Policy for Certain Deemed Tobacco Products'' that appeared in the **Federal Register** of March 14, 2019. In the draft guidance for industry, FDA requested comments on changes to the compliance policies for premarket review requirements for certain deemed tobacco products and how FDA intends to prioritize its enforcement resources with regard to the marketing of certain deemed tobacco products that do not have premarket authorization. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the draft guidance for industry published March 14, 2019 (84 FR 9345). Submit either electronic or written comments by April 30, 2019, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You must submit your comment(s) on or before April 30, 2019, to ensure that the Agency considers your comment(s) before it begins work on the final version of the guidance.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–0661 for ''Modifications to Compliance Policy for Certain Deemed Tobacco Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 14, 2019, FDA published a draft guidance for industry with a 30-day comment period to request comments on changes to the compliance policies for premarket review requirements and how FDA plans to prioritize its enforcement resources with regard to certain deemed tobacco products in the United States that do not have the required FDA premarket authorization for marketing. Comments on the draft guidance for industry will inform how FDA intends to finalize the guidance.

The Agency has received requests for an extension of the comment period for the draft guidance for industry. The requests conveyed concern that the current 30-day comment period does not allow sufficient time to develop a response to the draft guidance for industry.

FDA has considered the requests and is extending the comment period for the draft guidance for industry for 15 days, until April 30, 2019. The Agency believes that a 15-day extension allows adequate time for interested persons to submit comments without significantly delaying the process to finalize this guidance.

Dated: April 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–06952 Filed 4–8–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–MH–19–425: Revision Application for Implementation Research to Inform and Enhance PEPFAR HIV Pre-exposure Prophylaxis.

Date: April 29, 2019.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–MH–19–425: Revision Application for Implementation Research to Inform and Enhance PEPFAR HIV Pre-exposure Prophylaxis.

Date: April 29, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–274 and PAR–16–275: Adverse Drug Reaction Research.

Date: May 1, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06994 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meeting will be held as a teleconference only and is open to the public to dial-in for participation. Individuals who plan to dial-in to the meeting and need special assistance or other reasonable accommodations in order to do so, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors; Ad Hoc Subcommittee on HIV and AIDS Malignancy.

Date: May 24, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To discuss recommendations of the BSA Ad Hoc Working Group on Immunology of Therapies & Vaccines and Research Structure.

Place: National Institutes of Health, Building 10, Room 6N106, 10 Center Drive, Bethesda, MD 20892 (Telephone Conference Call). Dial: 1–650–479–3207, Access Code: 732 082 860.

Contact Person: Robert Yarchoan, M.D., Director, Office of HIV and AIDS Malignancy, Office of the Director, Chief, HIV and AIDS Malignancy Branch, Center for Cancer Research, National Cancer Institute, Building 10, Room 6N106, 10 Center Drive, Bethesda, MD 20892, 240–496–0328, *Robert.Yarchoan@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06996 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE OF DENTAL & CRANIOFACIAL RESEARCH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research DEBSC.

Date: June 11, 2019.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 31, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07005 Filed 4–8–19; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Center for Advancing Translational Sciences.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cures Acceleration Network Review Board.

Date: May 16, 2019.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Porter Neuroscience Research Center, Conference Rooms 620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 3:30 p.m.

Agenda: To discuss internal operations.

Place: National Institutes of Health, Porter Neuroscience Research Center, Conferences Room 620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: May 16, 2019.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, Porter Neuroscience Research Center, Conference Rooms 620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:30 p.m.

Agenda: To discuss internal operations, review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Conference Rooms 620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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 4, 2019

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06995 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Medication Discovery Using Rat Models of Relapse (8949).

Date: May 16, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Analytical Chemistry & Stability Testing of Treatment Drugs (8950).

Date: May 21, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07002 Filed 4–8–19; 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; Cells Census—2019/08 ZAG1 ZIJ–P (A1).

Date: May 29, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06997 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Education Program (R25).

Date: May 6–8, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 240–669–5199, *cerritem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06998 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: May 3, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Konrad Krzewski, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 240–747–7526, *konrad.krzewski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07000 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 14, 2019.

Closed: 9:00 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 10:30 a.m. to 4:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301–443–6487, *sweiss@nida.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analys, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07003 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Loyalty and Reward-Based Technologies to Increase Adherence to Medication Assisted Treatment (MAT) for Opioid Use Disorder (R43/R44/R41/R42—Clinical Trial Optional).

Date: April 9, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; America's Startups and Small Businesses Build Technologies to Stop the Opioid Epidemic (R41/R42/R43/R44—Clinical Trial Optional).

Date: April 12, 2019

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07001 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse: 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 Drug Abuse Special Emphasis Panel; Mechanism for Time-Sensitive Drug Abuse Research (R21 Clinical Trial Optional).

Date: April 11, 2019.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07004 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Extended Clinical Trial (R01).

Date: April 29, 2019.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Jennifer Hartt Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 301–761–6602, *jennifer.meyers@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: April 29, 2019.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Jennifer Hartt Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 301–761–6602, *jennifer.meyers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06999 Filed 4–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), Office of Partnership and Engagement (OPE).

ACTION: Notice of open teleconference Federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (''HSAC'' or ''Council'') will meet via teleconference on Tuesday, April 16, 2019 to review and deliberate on the draft Emergency Interim Report of the Families and Children Care Panel Subcommittee. The meeting will be open to the public.

DATES: The Council conference call will take place from 1:00 p.m. to 2:30 p.m. EDT on Tuesday, April 16, 2019. Please note that the meeting may end early if the Council has completed its business. Written comments can be submitted from April 15, 2019 through May 16, 2019.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). Comments must be identified by Docket No. DHS–2019–0017 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2019–0017 in the subject line of the message.
- *Fax:* (202) 282–9207. Include Mike Miron and the Docket No. DHS–2019–0017 in the subject line of the message.
- *Mail:* Mike Miron, Deputy Executive Director of Homeland Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr Ave. SE, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2019–0017,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2019–0017,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at *HSAC@hq.dhs.gov* or at (202) 447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, Federal, State, and local government, the private sector, and academia.

The agenda for the meeting is as follows: The Council will review and deliberate on the Families and Children Care Panel Subcommittee's Emergency Interim Report. Following this, there will be a break for public commentary.

Public Participation: Members of the public will be in listen-only mode. The public may register to participate in this Council teleconference via the following procedures. Each individual must provide his or her full legal name and email address no later than 5:00 p.m. EDT on Monday, April 15, 2019 to Mike Miron of the Council via email to *HSAC@hq.dhs.gov* or via phone at (202) 447–3135. The conference call details will be provided to interested members of the public after the closing of the public registration period and prior to the start of the meeting.

For information on services for individuals with disabilities, or to request special assistance, contact Mike Miron at *HSAC@hq.dhs.gov* or (202) 447–3135 as soon as possible.

Dated: April 3, 2019.

Mike Miron,

Deputy Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2019–07011 Filed 4–4–19; 4:15 pm]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Revision of Agency Information Collection Activity Under OMB Review: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0040, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR involves three broad categories of affected populations operating under a security program: Aircraft operators, foreign air carriers, and indirect air carriers. The collections of information that make up this ICR include security programs, security threat assessments (STA) on certain individuals, known shipper data via the Known Shipper Management System (KSMS), Indirect Air Carrier Management System (IACMS), and evidence of compliance recordkeeping.

DATES: Send your comments by May 9, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 19, 2018, 83 FR 58274.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Air Cargo Security Requirements.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0040.

Forms(s): Aviation Security Known Shipper Verification Form, Aircraft Operator or Air Carrier Reporting Template, and Security Threat Assessment Application.

Affected Public: This ICR involves regulated entities including aircraft operators, foreign air carriers, and indirect air carriers operating under a TSA-approved security program.

Abstract: Under the authority of 49 U.S.C. 44901, TSA's regulations impose screening requirements for cargo and other property transported on commercial aircraft (passenger and all-cargo). Chapter XII of title 49, Code of Federal Regulations (CFR) defines how TSA screens all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard passenger and cargo aircraft.

This information collection currently relates to the following requirements:

• Aircraft operators, foreign air carriers, and indirect air carriers (IACs) must collect certain information as part of the implementation of a standard security program, submit modifications to the standard security program to TSA for approval, and update such programs as necessary. As part of these security programs, the regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct STAs on individuals with unescorted access to cargo.

• Companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as ''known shippers,'' must submit information to TSA. This information is collected electronically through the KSMS.

• Regulated entities must submit (by entering into the IACMS) information required from applicants requesting to be approved as IACs and the information required for their IAC annual renewal in accordance with 49 CFR 1548.7. Regulated entities must also maintain records, including records pertaining to security programs, training, and compliance to demonstrate adherence with the regulatory requirements.

• Select aircraft operators and foreign air carriers operating under certain amendments to their security programs must provide to TSA detailed screening volumes and the methodology utilized to arrive at these volumes, as well as demonstrating progress toward full compliance with the cargo security measures specified in such amendments.

TSA is revising the collection of information:

• To revise TSA Form 419F to request specific information regarding residency of Indirect Air Carrier (IAC) Principals to ensure that those principals that do not physically reside nor work in the United States can meet the STA requirements.

• To incorporate in the form the acknowledgement of requirements from 49 CFR 1548.15(b)(1)(ii), which state: ''Cargo to be transported on a passenger aircraft operated by an aircraft operator with a full program under § 1544.101(a) or by a foreign air carrier under § 1546.101(a) or (b) of this chapter, is accepted by the indirect air carrier, until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier.''

• To provide a web-portal, allowing IACMS to upload supporting documentation electronically.

Number of Respondents: 118,325.[1]

Estimated Annual Burden Hours: An estimated 74,637 hours annually.

[1] After further evaluation, the respondents' amount has been adjusted from the reported number in the 60-day notice of 133,300 to 118,325. The annual burden hours have also been adjusted from 74,443 to 74,637.

Dated: April 3, 2019.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2019–07006 Filed 4–8–19; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6157–N–01]

Agenda and Notice of Public Meeting of the Moving to Work Research Advisory Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of a federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Moving to Work (MTW) Research Advisory Committee (Committee). The Committee meeting will be held via conference call on Tuesday, April 30, 2019. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The teleconference meeting will be held on April 30, 2019 from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EDT).

FOR FURTHER INFORMATION CONTACT: Eva Fontheim, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4126, Washington, DC 20410, telephone (202) 402–3461 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339 or can email: *MTWAdvisoryCommittee@hud.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2). The Committee was established on May 2, 2016, to advise HUD on specific policy proposals and methods of research and evaluation related to the expansion of the MTW demonstration to an additional 100 Public Housing Authorities (PHAs). See 81 FR 24630. HUD has previously convened two conference call meetings of the Committee on July 26 and 28, 2016, a two-day in-person meeting on September 1 and 2, 2016, and follow-up conference call meetings on December 13, 2016 and January 25, 2018. The Committee also convened on October

10, 2018. The minutes of these meetings are available on the HUD website at: *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac.*

HUD is now convening a 3-hour conference call to explore the possibility of adding an additional cohort policy study. HUD will convene the meeting on Tuesday, April 30, 2019 via teleconference from 1:00 p.m. to 4:00 p.m. (EDT). The agenda for the meeting is as follows:

Tuesday, April 30, from 1:00–4:00 p.m. EDT

I. Welcome and Introductions
II. Summary of 2016–2018 Meetings
  a. Revisit Guiding Principles
  b. Confirm Committee Recommendations
III. Goal for this Meeting
  a. Discuss and provide recommendations on Cohort Four: Landlord Incentives in the Section 8 Housing Choice Voucher program (including research design and specific policies).
IV. BREAK
V. Policy Framework and Research Methodology—MTW Statutory Objective #3: Increase Housing Choices for Low-Income Families.
  a. Cohort Four: Landlord Incentives in the Section 8 Housing Choice Voucher program—Select research design and specific policies.
VI. Revisit Cohort Three: Proposed Approach for Studying Work Requirements
VII. Update on the MTW Expansion
VIII. Public Input
IX. Summary of Discussion
X. Discuss Next Steps and Adjourn

The public is invited to call in to the meeting by using the following Conference Toll-Free Number in the United States: 1–800–230–1059 or the following International number for those outside the United States: (612) 234–9960. Please be advised that the operator will ask callers to provide their names and their organizational affiliations (if any) prior to placing callers into the conference line. Callers can expect to incur charges for calls they initiate over wireless lines and for international calls, and HUD will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number. Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and providing the FRS operator with the Conference Call Toll-Free Number: 1–800–230–1059.

Members of the public will have an opportunity to provide feedback during the call. The total amount of time for such feedback will be limited to ensure pertinent Committee business is completed. Further, the amount of time allotted to each individual commenter will be limited and will be allocated on a first-come first-served basis by HUD. If the number of commenters exceeds the available time, HUD may ask for the submission of comments via email.

Records and documents discussed during the meeting, as well as other information about the work of this Committee, will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicPage* by clicking on ''Agencies/Committees'' at the top of the tool bar. These materials will also be available on the MTW Demonstration's expansion web page at: *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac.* Records generated from this meeting may also be inspected and reproduced at the Department of Housing and Urban Development Headquarters in Washington, DC, as they become available, both before and after the meeting.

Outside of the work of this Committee, information about HUD's broader implementation of the MTW expansion, as well as additional opportunities for public input, can be found on the MTW Demonstration's expansion web page at: *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

Dated: April 3, 2019.

R. Hunter Kurtz,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

Todd Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2019–06965 Filed 4–8–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–10]

Notice of Proposed Information Collection: Comment Request; FHA Insured Title I Property Improvement and Manufactured Home Loan Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, Director, Home Mortgage Insurance Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Control Number, if applicable: 2502–0328.

Type of Request: Extension of currently approved collection.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from defaults. HUD uses this information to evaluate individual loans on their overall program performance. The information collected is used to determine insurance eligibility and claim eligibility.

Agency form numbers, if applicable: HUD–637, 646, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, & SF 3881.

Respondents:

- Lenders approved to make insured Title I loans
- Dealers/Contractors
- Manufacturers of manufactured homes
- Applicants for property improvement loans

- Applicants for manufactured home loans

Estimation of the total numbers of hours needed to prepare the information collection:

Estimated Number of Respondents: 13,593.

Estimated Number of Responses: 73,440.

Frequency of Response: On occasion, periodic.

Average Hours per Response: 17.3.

Total Estimated Burdens: 46,099.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 29, 2019.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–06967 Filed 4–8–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–01]

60-Day Notice of Proposed Information Collection: Youth Homelessness Demonstration Application

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Caroline Crouse, Senior Program Specialist, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7264, Washington, DC 20410; telephone (202) 402–4595 (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Crouse.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Youth Homelessness Demonstration Program.

OMB Approval Number: 2506–0210.

Type of Request: Update.

Form Number: Youth Homelessness Demonstration Application (all parts), SF 424, HUD–2991, HUD–2993, HUD–2880, SF–LLL, HUD–50070.

Description of the need for the information and proposed use: The information to be collected will be used to rate applications, to determine eligibility for the Youth Homelessness Demonstration Program and establish grant amounts. Applicants, which must be state or local governments, or nonprofit organizations will respond to narrative prompts to demonstrate their experience and expertise in providing housing and services to youth experiencing homelessness and to describe their intended program design, that will address the needs for housing and services that will result in housing placement and sufficient income to ensure housing is maintained once assistance discontinues.

Respondents (i.e., affected public): Continuum of Care collaborative applicants, which can be States, local governments, private nonprofit organizations, public housing authorities, and community mental health associations that are public nonprofit organizations.

Estimated Number of Respondents: 150 applicants; 25 sites submitting project applications and plans.

Estimated Number of Responses: 150 site selection applications; 125 project applications; 25 coordinated community plans.

Frequency of Response: 1 site selection application per applicant; 5 project applications per site; 1 coordinated community plan per site.

Average Hours per Response: 24.53 hours; 8.09 hours; 248.17 hours.

Total Estimated Burdens: 3,826.70 + 1032.1 + 6,204.25 = 11,063.05 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 28, 2019.

Lori Michalski,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–06966 Filed 4–8–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2019–0004; FF09M21200–189–FXMB1231099BPP0]

Migratory Bird Hunting; Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on April 23, 2019, to identify and discuss preliminary issues concerning the 2020–21 migratory bird hunting regulations.

DATES: The meeting will be held April 23, 2019. The meeting will commence at approximately 10:30 a.m. and is open to the public.

ADDRESSES: The Service Regulations Committee meeting will meet at the Westin Denver International Airport, 8300 Pena Boulevard, Denver, CO 80249; (303) 317–1800.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION: Under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Service regulates the hunting of migratory game birds. We update the migratory game bird hunting regulations, located in title 50 of the Code of Federal Regulations in part 20, annually. Through these regulations, we establish the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. To help us in this process, we have administratively divided the nation into four Flyways (Atlantic, Mississippi, Central, and Pacific), each of which has a Flyway Council. Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on April 23, 2019, at 11 a.m., to identify preliminary issues concerning the 2020–21 migratory bird hunting regulations for discussion and review by the Flyway Councils at their August and September meetings.

In accordance with Department of the Interior (hereinafter Department) policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. The Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the person listed under **FOR FURTHER INFORMATION CONTACT**, TTY 800–877–8339, with your request by close of business on April 15, 2019.

Dated: March 8, 2019.

Noah Matson,

Acting Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service.

[FR Doc. 2019–07077 Filed 4–8–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–NWRS–2018–N128; FF09R50000 18X FVRS84510900000; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; U.S. Fish and Wildlife Service Preliminary Land Acquisition Tracking Processes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 9, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–New in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information on July 11, 2018 (83 FR 32138). We received no comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Information collected by the U.S. Fish and Wildlife Service (in support of the land acquisition program) is required under applicable statutes, Department of Justice regulations, Departmental and Service policies, and best business practices. In addition, the land acquisition program facilitates Secretarial Orders 3356 and 3366 by tracking land acquisitions that have potential to support public hunting, fishing, and other forms of outdoor recreation, and access related thereto. Authorities for the collection of realty-related information include:

- Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016);
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601);
- National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd);
- Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d);
- Migratory Bird Conservation Act (16 U.S.C. 715–715r, as amended);
- Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l);
- Endangered Species Act of 1973, as amended (16 U.S.C. 1534);
- Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901); and
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a).

The Service tracks information collected from landowners as part of the preliminary land acquisition process. Information collected by the Service as part of the preliminary land acquisition process may include the following:

- Initial Requests—Initial request to consider property, to include such items as:
  - Identifying information for the legal property owner(s), such as:
    - —Name of primary property owner, along with spouse and/or co-owner(s) whose names appear on the current deed to the property under review;
    - —Marital status;
    - —Other names used; and
    - —Contact information to include telephone numbers, personal email addresses, and mailing/home addresses.
  - Financial information, to include Social Security Numbers (necessary for final payment transaction).
  - Property description, to include such information as:
    - —Property name,
    - —Location,
    - —Legal description, and
    - —Introductory information.
- Permission to Inspect and Appraise (FWS Form 3–2471)—Collects information about the property owner and location, and grants permission to enter and inspect the property for real estate acquisition purposes. Inspection may include, but is not limited to:
  - Appraisal Valuations;
  - Boundary survey;
  - Hazardous materials examination (contaminant survey); and
  - Physical examination of any structures on the property.

We do not use FWS Forms 3–2471 in projects that are under Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), Cooperative Agreements, some donation partnerships, and other special cases.

- Waiver of Appraisal Requirement (nonform-letter)—Per 49 CFR 24.102(c)(2), a willing-seller landowner may release the Service from the obligation of obtaining an appraisal for: (1) Land donations and (2) certain land acquisitions where the anticipated value is low and the valuation problem is uncomplicated.

Unless delivered in person, both the Permission to Inspect and Appraise (FWS Form 3–2471) and the Waiver of Appraisal Requirement will contain a cover letter referred to as the Access Permission Letter. The Access Permission Letter does not request any information but is used to explain the form or waiver process.

Information is collected and protected in accordance with the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). We will maintain the information in a secure System of Records (Real Property Records, FWS–11; 64 FR 103, dated May 2, 1999). We gather Social Security numbers and banking information to assist with electronic payments and preparation of the required Internal Revenue Service Forms 1099.

Title of Collection: U.S. Fish and Wildlife Service Preliminary Land Acquisition Tracking Processes.

OMB Control Number: 1018–New.

Form Number: 3–2471.

Type of Review: Existing collection in use with an OMB Control Number.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments participating in realty transactions with the Service.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated Annual burden hours *
Initial Requests:					
Individuals	129	1	129	.5	65
Private Sector	78	1	78	1	78
Government	13	1	13	2	26
Permission to Inspect and Appraise:					
Individuals	57	1	57	.5	29
Private Sector	24	1	24	.5	12
Government	4	1	4	2	8
Waiver of Appraisal Requirement:					
Individuals	3	1	3	.5	2
Private Sector	56	1	56	.5	28
Government	9	1	9	2	18
Totals	*373*		*373*		*266*

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 4, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–06944 Filed 4–8–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2019–N003; FF07CAMM00–FX–ES111607MRG01]

Marine Mammals; Letters of Authorization To Take Pacific Walrus and Polar Bears in the Beaufort and Chukchi Seas, Alaska, in 2018

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, the U.S. Fish and Wildlife Service has issued Letters of Authorization (LOA) for the nonlethal take of polar bears and Pacific walruses incidental to oil and gas industry exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska. This notice announces a list of the LOAs that were issued just prior to and during 2018. The LOAs stipulate conditions and methods that minimize impacts to polar bears and Pacific walruses from these activities. No LOAs were requested or issued in 2018 for the nonlethal take of polar bears and Pacific walruses incidental to oil and gas industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska.

ADDRESSES: The Letters of Authorization listed in this notice are available electronically at the following location: *http://www.fws.gov/alaska/fisheries/mmm/itr.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Putnam at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, MS 341, Anchorage, Alaska 99503; 800–362–5148 or 907–786–3844.

SUPPLEMENTARY INFORMATION: On August 5, 2016, the U.S. Fish and Wildlife Service published in the **Federal Register** a final rule (81 FR 52276) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walruses (*Odobenus rosmarus divergens*) during year-round oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The rule established subpart J in part 18 of title 50 of the Code of Federal Regulations (CFR) and is effective through August 5, 2021. The rule prescribed a process under which we issue Letters of Authorization (LOAs) to applicants conducting activities as described under the provisions of the regulations. This rule replaced a similar rule, published on August 3, 2011 (76 FR 47010), which expired on August 3, 2016, and likewise prescribed a process under which we issued such LOAs.

Each LOA stipulates conditions or methods that are specific to the activity and location. Holders of the LOAs must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walruses and polar bears and their habitat, and on the availability of these marine mammals for subsistence purposes. Intentional take and lethal incidental take are prohibited under these regulations.

In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) and our regulations at 50 CFR part 18, subpart J, in 2018 we issued LOAs to each of the following companies in the Beaufort Sea and adjacent northern coast of Alaska:

BEAUFORT SEA LETTERS OF AUTHORIZATION

Company	Activity	Project	LOA No.
ConocoPhillips Alaska, Inc	Exploration	Putu Exploration well	17–12
Peak Oilfield Service Company, LLC.	Support	Coastal transportation services	18–01
Armstrong Energy, LLC	Exploration	Pikka #2 exploration	18–02
Oil Search Alaska, Inc	Exploration	Transfer of Armstrong's LOA to Oil Search	18–02
Hilcorp Alaska, LLC	Development	Liberty geotech sampling	18–03
ConocoPhillips Alaska, Inc	Development	Seismic exploration and early development for GMT2 in the National Petroleum Reserve—Alaska (NPR–A).	18–04
SAExploration, Inc	Exploration	Yukon 3d seismic	18–05
BEM Systems, Incorporated	Remediation	Oliktok remediation and coastal erosion study	18–06
Petrotechnical Resources of Alaska	Exploration	Methane hydrate exploration on the North slope	18–07
BP Exploration (Alaska), Inc	Remediation	Demolition of the Liberty rig	18–08
Chevron Environmental Management Company.	Remediation	Kalubik Creek	18–09
Caelus Energy Alaska, LLC	Development	Nuna project	18–10
ConocoPhillips Alaska, Inc	Exploration	Harrison Bay	18–11
ConocoPhillips Alaska, Inc	Development	GMT–2 Development	18–12
ConocoPhillips Alaska, Inc	Exploration	2018–2019 NPR–A Exploration & Appraisal Drilling Program	18–13
ConocoPhillips Alaska, Inc	Exploration	NPR–A geotech and weather station near Harrison Bay	18–14
SAExploration, Inc	Exploration	Staines 3D seismic project	18–15
BP Exploration (Alaska), Inc	Exploration	Greater Prudhoe Bay 3D Seismic Survey	18–16

On June 12, 2013, we published in the **Federal Register** a final rule (78 FR 35364) establishing regulations that allowed us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walruses during year-round oil and gas industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska. The rule established 50 CFR part 18 subpart I and was effective until June 11, 2018. The process under which we issue LOAs to applicants and the requirements that the holders of the LOAs must follow is the same as described above for LOAs issued under 50 CFR part 18, subpart J. We issued no LOAs under the subpart I regulations in 2018 prior to their expiration on June 12, 2018.

Authority: We issue this notice under the authority of the MMPA (16 U.S.C. 1361 *et seq.*).

Dated: February 13, 2019.

Karen P. Clark,

Acting Regional Director, Alaska Region.

[FR Doc. 2019–06955 Filed 4–8–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2019–N037; FXES11140200000–190–FF02ENEH00]

Draft Environmental Assessment and Habitat Conservation Plan; Davis Ranch, Bexar County, Texas; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments; correction.

SUMMARY: On March 18, 2019, we, the U.S. Fish and Wildlife Service, announced via a **Federal Register** notice the availability of a draft environmental assessment (dEA) and habitat conservation plan (HCP) for development in Bexar County, Texas. Under the Endangered Species Act, the Davis McCrary Property Trust applied for an incidental take permit (ITP) that would authorize incidental take of the golden-cheeked warbler. Our **Federal Register** notice inadvertently did not give the correct permit number and did not specifically state how the public can submit comments. In this notice, we correct those errors.

DATES: To ensure consideration, written comments must be received or postmarked on or before May 8, 2019.

ADDRESSES: *Accessing Documents:*

Internet: DEA, HCP, and ITP application: You may obtain electronic copies of all three of the documents on the Service's website at *http://www.fws.gov/southwest/es/AustinTexas/.*

U.S. Mail: You may obtain the documents at the following addresses. In your request for documents, please reference Davis Ranch HCP.

- *DEA and HCP:* A limited number of CD–ROM and printed copies of the dEA and HCP are available, by request, from Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974.
- *ITP Application:* The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

In-Person: DEA and dHCP: Copies of the draft EA and HCP (but not the ITP application) are available for public inspection and review, by appointment and written request only, between the hours of 8 a.m. to 4:30 p.m. at the following locations:

- U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Submitting Comments: Regarding any of the documents available for review, you may submit written comments by one of the following methods. In your comments, please reference Davis Ranch HCP.

- *Electronically:* Submit electronic comments to *FW2_AUES_Consult@fws.gov.*
- *By Hard Copy:* Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; via phone at 512–490–0057; or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: In a March 18, 2019, **Federal Register** notice (84 FR 9806), we, the U.S. Fish and Wildlife Service (Service), made available the draft Environmental Assessment (dEA) and the Davis Ranch Habitat Conservation Plan (HCP) for development of a 724-acre property in Bexar County, Texas. The Davis McCrary Property Trust has applied to the Service for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested ITP, which would be in effect for a period of 30 years, if granted, would authorize incidental take of the federally endangered golden-cheeked warbler (*Setophaga* (=*Dendroica*) *chrysoparia*). The proposed incidental take would result from activities associated with otherwise lawful activities, including commercial and residential development on the property as a result of clearing of vegetation, earth-moving activities, and construction of structures.

Corrections

In our March 18, 2019, notice (84 FR 9806), we did not provide the correct permit number. The correct permit number is TE33684D–0.

We also wish to clarify how the public can submit comments. Please see *Submitting Comments* under **ADDRESSES**, above.

Finally, while the original end date for the comment period was April 17, 2019, we are extending the comment period to May 8, 2019, because of the errors in our original notice.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Stewart Jacks,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2019–06906 Filed 4–8–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–18–L13100000–PP0000]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file plats of survey 30 calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming. 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 9, 2019.

ADDRESSES: You may submit written protests to the Wyoming State Director at WY957, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Sonja Sparks, BLM Wyoming Chief Cadastral Surveyor at 307–775–6225 or *s75spark@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact this office during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with this office. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are: The plat and field notes representing the dependent resurvey of

a portion of the west boundary and the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, the survey of the subdivision of section 30 and the metes-and-bounds survey of Parcel A, section 30, Township 44 North, Range 81 West, Sixth Principal Meridian, Wyoming, Group No. 905, was accepted April 1, 2019.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, Township 33 North, Range 108 West, Sixth Principal Meridian, Wyoming, Group No. 955, was accepted April 1, 2019.

The plat and field notes representing the corrective dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, Township 23 North, Range 81 West, Sixth Principal Meridian, Wyoming, Group No. 984, was accepted April 1, 2019.

The plat and field notes representing the dependent resurvey of Tracts 41, 42 and 43 and portions of Tracts 39 and 40, the south boundary and the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, the survey of the subdivision of sections 34 and 35 and the metes-and-bounds surveys of certain parcels, Township 50 North, Range 90 West, Sixth Principal Meridian, Wyoming, Group No. 1005, was accepted April 1, 2019.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest within 30 calendar days from the date of this publication with the Wyoming State Director at the above address. Any notice of protest received after the scheduled date of official filing will be untimely and will not be considered. 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 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 next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available 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.

Copies of the preceding described plats and field notes are available to the public at a cost of $4.20 per plat and $.13 per page of field notes.

Dated: April 3, 2019.

Sonja S. Sparks,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2019–06954 Filed 4–8–19; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1151]

Certain Photovoltaic Cells and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 4, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Hanwha Q CELLS USA Inc. of Dalton, Georgia and Hanwha Q CELLS & Advanced Materials Corporation of Korea. Letters supplementing the complaint were filed on March 12, 14, and 21, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain photovoltaic cells and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,893,215 (''the '215 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 3, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 12–14 of the '215 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''solar cells and solar modules'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the

statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Hanwha Q CELLS USA Inc., 300 Nexus Drive, Dalton, GA 30721
Hanwha Q CELLS & Advanced Materials Corporation, 86 Cheonggyecheon-ro, Jung-gu, Seoul, Republic of Korea 04541

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

JinkoSolar Holding Co., Ltd., c/o Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman KY1–111, Cayman Islands
JinkoSolar (U.S.) Inc., 595 Market Street, Suite 2200, San Francisco, CA 94105
Jinko Solar (U.S.) Industries Inc., 595 Market Street, Suite 2200, San Francisco, CA 94105
Jinko Solar Co., Ltd., No. 1 Jingke Road, Shangrao Economic Development Zone, Jiangxi, 334100, China
Zhejiang Jinko Solar Co., Ltd., No. 58 Yuanxi Road, Yunahua Industrial Park, Yuanhua Town, Haining City, 314416, China
Jinko Solar Technology Sdn. Bhd., 14A Jalan Tun Mohd Fuad, Taman Tun Dr Ismail, Kuala Lumpur, Wilaya, 60000, Persekutuan, Malaysia
LONGi Solar Technology Co., Ltd., No. 8369 Shangyuan Road, Caotan Shengtai Industrial Park, Xi'an Economic and Technological Development Zone, Xi'an, Shaanxi, 710018, China
LONGi Green Energy Technology Co., Ltd., 388 Hangtian Middle Road, Chang'An District, Xi'an, Shaanxi, 710100, China
LONGi (H.K.) Trading Ltd., 11/F, Capital Centre, 151 Gloucester Road, Wanchai, 00000, Hong Kong
LONGi (Kuching) Sdn. Bhd., Lot 2118 Jalan Usaha Jaya, Sama Jaya Free Industrial Zone, Kuching, Sarawak, 93350, Malaysia
Taizhou LONGi Solar Technology Ltd., No. 268 Xingtai South Road, Taizhou, Jiangsu, 225300, China
Zhejiang LONGi Solar Technology Ltd., No. 2 Bailing Middle Road, Donggang Industrial Function Area, Economic Development Zone, Quzhou, Zhejiang, 324000, China
Hefei LONGi Solar Technology Ltd., S1 Workshop, No. 888 Changning Avenue, High-Tech Zone, Hefei, Anhui, 230088, China
LONGi Solar Technology (U.S.) Inc., 2603 Camino Ramon, Suite 423, San Ramon, CA 94583
REC Solar Holdings AS, Dramrnensveien 169, Oslo, 0277, Norway
REC Solar Pte. Ltd., 20 Tuas South Ave. l4, Tuas, 637312, Singapore
REC Americas, LLC, 1820 Gateway Drive, Suite #170, San Mateo, CA 94404

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 3, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–06942 Filed 4–8–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 03–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Friday, April 12, 2019

10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.
11:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–07073 Filed 4–5–19; 4:15 pm]

BILLING CODE 4410–BA–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following renewals of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 10, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collections to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0039.

Title: Borrowed Funds from Natural Persons, 12 CFR 701.38.

Type of Review: Extension of a currently approved collection.

Abstract: Section 701.38 of the NCUA regulations grants federal credit unions the authority to borrow funds from a natural person as long as they maintain a signed promissory note which includes the terms and conditions of maturity, repayment, interest rate, method of computation and method of payment; and the promissory note and any advertisements for borrowing have clearly visible language stating that the note represents money borrowed by the credit union and does not represent shares and is not insured by the National Credit Union Insurance Fund (NCUSIF). NCUA will use this information to ensure a credit union's natural person borrowings are in compliance and address all regulatory and safety and soundness requirements.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 187.

Estimated Annual Frequency: 1.

Estimated Total Annual Responses: 187.

Estimated Annual Responses per Respondent: 0.167.

Estimated Total Annual Burden Hours: 31.

Reason for Change: Review of the previously reported burden has been adjusted to only account for burden that falls under the PRA. Regulatory burden has been removed. A reduction of 904 burden hours is due to this adjustment. A total of 31 burden hours is requested.

OMB Number: 3133–0129.

Title: Corporate Credit Union, 12 CFR part 704.

Type of Review: Extension of a currently approved collection.

Abstract: Part 704 of NCUA's regulations established the regulatory framework for corporate credit unions. This includes various reporting and recordkeeping requirements as well as safety and soundness standards. NCUA has established and regulates corporate credit unions pursuant to its authority under sections 120, 201, and 209 of the Federal Credit Union Act, 12 U.S.C. 1766(a), 1781, and 1789. The collection of information is necessary to ensure that corporate credit unions operate in a safe and sound manner by limiting risk to their natural person credit union members and the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 11.

Estimated Annual Frequency: 20.18.

Estimated Total Annual Responses: 222.

Estimated Annual Responses per Respondent: 2.40.

Estimated Total Annual Burden Hours: 534.

Reason for Change: The adjustment in the number of respondents are due to the decrease in the number of Corporate Credit Unions from 12 to 11 and the inclusion of information collection requirements that had been omitted on the previous submission. These adjustments increase the total burden request by 51 hours, for a total of 534 burden hours requested.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on April 4, 2019.

Dated: April 4, 2019.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2019–06969 Filed 4–8–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, April 23, 2019.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

58957 *Pipeline Accident Report*—Building Explosion and Fire, Silver Spring, Maryland, August 10, 2016

News Media Contact: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, April 17, 2019.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

For Media Information Contact: Keith Holloway at (202) 314–6100 or by email at *keith.holloway@ntsb.gov.*

Dated: April 5, 2019.

LaSean McCray,

Assistant Federal Register Liaison Officer.

[FR Doc. 2019–07121 Filed 4–5–19; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412, 50–346, 50–440; NRC–2018–0174]

FirstEnergy Corp.; FirstEnergy Solutions; FirstEnergy Nuclear Generation, LLC; FirstEnergy Nuclear Operating Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's Decision under 10 CFR 2.206; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision with regard to a petition dated March 27, 2018, as supplemented on October 8, 2018, filed by the Environmental Law and Policy Center (the petitioner), requesting that the NRC take enforcement action with regard to FirstEnergy Corp. (FE), FirstEnergy Solutions (FES), FirstEnergy Nuclear Generation, LLC (NG), and FirstEnergy Nuclear Operating Company (FENOC) (the licensees). The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The Director's Decision was issued on April 3, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0174 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0174. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov* and Perry Buckberg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1383, email: *Perry.Buckberg@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see **ADDRESSES** section of this document.

Document	ADAMS accession No.
ENVIRONMENTAL LAW AND POLICY CENTER—10 CFR 2.206 Petition and Attachments 1 through 6 Citizen Complaint and Request for Enforcement Action Regarding FirstEnergy Nuclear Facility Operations in Ohio and Pennsylvania Dated March 27, 2018.	ML18094A642, ML18094A645, ML18094A647, ML18094A649, ML18094A650, ML18094A651, ML18094A641.
ELPC 2.206 Petition, Motion Of The Environmental Law & Policy Center, Ohio Citizen Action, Ohio Environmental Council and Environmental Defense Fund For Relief From The Automatic Stay, 11 U.S.C. § 362/L.R. 4001–1.	ML18151A457.
Official Transcript of Proceedings, Meeting Between Petitioners and NRC Petition Review Board on June 19, 2018, Regarding 10 CFR 2.206 Petition OEDO–18–00160 Re: FENOC Operations in Ohio and Pennsylvania.	ML18194A395.
ELPC 2.206 Petition OEDO–18–00160 Regarding FENOC operations in Ohio and Pennsylvania—PRB's Initial Recommendation On The Petition Dated March 27, 2018, on FENOC Bankruptcy.	ML18214A740.
ELPC Supplement to 2.206 Petition—OEDO–18–00160, regarding Citizen Complaint and Request for Enforcement Action Regarding FirstEnergy Nuclear Facility Operations in Ohio and Pennsylvania. Dated October 8, 2018.	ML18282A242.
OEDO–18–00160—ELPC Proposed Director's Decision on 10 CFR 2.206 Petition for Citizen Complaint and Request for Enforcement Action Regarding FirstEnergy Nuclear Facility Operations in Ohio and Pennsylvania. Dated January 8, 2019.	ML18309A157.
OEDO–18–00160—ELPC Comments on Proposed Director's Decision on 10 CFR 2.206 Petition for Citizen Complaint and Request for Enforcement Action Regarding FirstEnergy Nuclear Facility Operations in Ohio and Pennsylvania. Dated January 22, 2019.	ML19037A340.
FENOC Submission—Submittal of the Decommissioning Funding Status Reports for Beaver Valley Power Station, Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, and Perry Nuclear Power Plant. Dated March 15, 2019.	ML19074A242.

The text of the director's decision is attached.

Dated at Rockville, Maryland, this 4th day of April, 2019.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT—DIRECTOR'S DECISION DD–19–01

DD–19–01

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Ho K. Nieh, Director

[Docket Nos. 50-334 and 50-412, 50-346, 50-440]

[License Nos. DPR-66 and NPF-73, NPF-3, NPF-58]

In the Matter of FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit 1, Perry Nuclear Power Plant, Unit 1

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated March 27, 2018, as supplemented on October 8, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML18094A642 and ML18282A242, respectively), the Environmental Law and Policy Center filed a petition with U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, ''Requests for action under this subpart.'' The petitioner requested that the NRC take the following actions:

(A) Issue Demands for Information

(1) Promptly issue a Demand for Information to FirstEnergy Corp. (FE), FirstEnergy Solutions (FES), FirstEnergy Nuclear Generation, LLC (NG), and FirstEnergy Nuclear Operating Company (FENOC) requesting site-specific decommissioning funding plans for Beaver Valley Power Station, Units 1 and 2 (BVPS), Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), and Perry Nuclear Power Plant, Unit 1 (PNPP).

(2) Promptly issue a Demand for Information to FE, FES, NG, and FENOC with regard to their reliance on external trust funds from FE and FES to satisfy their decommissioning financial obligations.

(3) Promptly issue a Demand for Information to FE, FES, NG, and FENOC with regard to their continued reliance on parent company guarantees from FE to satisfy decommissioning funding obligations, including the ability of FE to satisfy the parent company guarantee financial test under Appendix A, ''Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning,'' to 10 CFR part 30, ''Rules of General Applicability to the Domestic Licensing of Byproduct Material.''

(4) Promptly issue a Demand for Information to FES, NG, and FENOC to the extent that they are relying on parent company guarantees from FES to satisfy decommissioning funding obligations, including the ability of FES to satisfy the parent company guarantee financial test under 10 CFR part 30, Appendix A.

(5) Promptly issue a Demand for Information to FE, FES, NG, and FENOC with regard to their proposed investment and financial contribution plans to make up the current decommissioning shortfall.

(6) Promptly issue a Demand for Information to FE and FES with regard to each of their commitments to guarantee coverage of NG's and FENOC's decommissioning trust fund shortfalls in the event of bankruptcy.

(B) Notice of Violation and Penalties

(1) Promptly issue a Notice of Violation against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 U.S.C.A. Section 2201(x)(1), and 10 CFR 50.75, ''Reporting and Recordkeeping for Decommissioning Planning.''

(2) Promptly issue civil penalties against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 U.S.C.A., Section 2201(x)(1), and 10 CFR 50.75.

(3) Promptly issue an order to suspend NG's and FENOC's licenses for BVPS, DBNPS, and PNPP.

(C) Other Requests

The petitioner also urges the NRC to prohibit NG and FENOC from placing their nuclear facilities into a safe storage (SAFSTOR) status for purely financial reasons. Under SAFSTOR, often considered ''deferred dismantling,'' a nuclear facility is maintained and monitored in a condition that allows the radioactivity to decay; afterwards, the plant is dismantled and the property decontaminated. The petitioner requests that the NRC give immediate emergency consideration to this petition in light of FE's and FES's rapidly deteriorating financial conditions.

(D) Basis for Petitioner's Request

The following points summarize the basis for the petitioner's request, as stated in the petition and the supplement:

(1) NG's and FENOC's decommissioning trust amounts are insufficient on their own to provide reasonable assurance of funding.

(2) FE cannot rely on rate increases forced on retail ratepayers to pay for the decommissioning trust fund shortfalls.

(3) The costs, including SAFSTOR, may be much higher than expected because of significantly higher trust fund shortfalls, as reported by the Callan Institute and flaws in the NRC's cost estimating formula.

(4) On March 28, 2018, FES and FENOC announced and informed the NRC by letter dated April 25, 2018 (ADAMS Accession No. ML18115A007), that they would permanently retire all four of their reactors within the next 3 years. If the plants close in 2020 and 2021, the funds cannot grow to levels that will pay for the required decommissioning.

(5) The parent companies FE and FES filed for bankruptcy on March 31, 2018.

(6) According to the petitioner, the transcript from a recent Federal court proceeding provides additional information about funding for FE's nuclear plant decommissioning in the FES bankruptcy case (*see* Case No. 18-50757, ''Motion of Debtors to Approve Settlement (dated August. 26, 2018)), which was heard on September 25, 2018, by the Honorable Judge Alan M. Koschik, for the U.S. Bankruptcy Court for the Northern District of Ohio.

Although the petition does not request specific immediate action(s), it does request ''immediate emergency consideration.'' Based on the information provided in the petition, the Petition Review Board (PRB) determined that the financial concerns do not raise an imminent safety issue or indicate that the licensee, FENOC, is unable to safely operate the facilities listed in the petition. The PRB concluded that there is no current public health and safety concern requiring immediate NRC action because financial concerns do not raise an imminent safety issue or indicate that FENOC is unable to safely operate the facilities listed in the petition. The petition manager informed the petitioner of this conclusion by e-mail dated May 2, 2018 (ADAMS Accession

No. ML18123A299). The supplement, which the petitioner submitted on October 8, 2018 (ADAMS Accession No. ML18282A242), did not expand the scope of the petition or request additional actions that should be considered as a new petition.

Additionally, the petitioner met with the PRB on June 19, 2018, to discuss the petition. The transcript of this meeting is treated as a supplement to the petition and is publicly available online at ADAMS Accession No. ML18194A395. The transcript is also available for purchase and examination at the NRC's Public Document Room (PDR), located at O1F21, 11555 Rockville Pike (first floor), Rockville, MD 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents in ADAMS should contact the NRC's Public Document Room (PDR) reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to *pdr.resource@nrc.gov*.

On August 2, 2018, the petition manager informed the petitioner by letter that the PRB had determined that the petition meets the acceptance criteria for review and that the PRB has made an initial recommendation to accept the petition for review (ADAMS Accession No. ML18220B314). The petition manager also asked whether the petitioner desired an opportunity to comment on this recommendation, in person or through a teleconference, consistent with Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions,'' dated October 25, 2000. The petitioner declined this offer for a second meeting with the PRB.

On January 8, 2019, the NRC sent the proposed director's decision to the petitioner and to the licensee for comments (ADAMS Accession Nos. ML18309A228 and ML18309A189, respectively). The petitioner responded with comments on the proposed director's decision on January 22, 2019 (ADAMS Accession No. ML19037A340). The licensee did not submit comments on the proposed director's decision. The petitioner's comments and the staff's responses to the comments are included as an attachment to this director's decision.

Based on the staff's evaluation of the petitioner's January 22, 2019, comments, the final director's decision has not changed from the proposed director's decision.

II. Discussion

FENOC Is Currently in Compliance with NRC Regulations

The NRC has a comprehensive, regulation-based, framework that provides oversight of a licensee's decommissioning funding during operations and decommissioning. During operations, licensees must biennially submit decommissioning funding status reports by March 31. At 5 years before the projected permanent shutdown of their reactors until license termination, licensees must submit annual decommissioning funding status reports by March 31 of each year. Additionally, at intervals not to exceed 3 years, a licensee must update and submit its decommissioning funding plans for its independent spent fuel storage installations (ISFSIs) to account for any changes in costs.

FE is the parent company of FES and FENOC, which are wholly owned subsidiaries. The NG owns the nuclear plants, which is a wholly owned subsidiary of FES. FENOC operates the nuclear plants. FENOC and NG are the licensees for BVPS, DBNPS, and PNPP. FENOC submitted its most recent decommissioning funding status reports for BVPS, DBNPS, and PNPP in a letter to the NRC dated March 24, 2017 (ADAMS Accession No. ML17083B221). Based on its review of these reports, the NRC staff concluded that FENOC met the minimum funding requirements for future radiological decommissioning of its NRC-licensed facilities for the 2017 reporting cycle, and that there were no shortfalls in decommissioning funding.

In accordance with 10 CFR 50.75(f)(1), FENOC is required to submit its next decommissioning funding status reports for BVPS, DBNPS, and PNPP to the NRC by March 31, 2019. The reports were submitted to the NRC on March 15, 2019 (ADAMS Accession No. ML19074A242). The NRC staff will conduct a similar review of these decommissioning funding status reports for the units, and will consider the new expected shutdown dates, funding levels as of December 31, 2018, and any updated financial information necessary to demonstrate reasonable assurance that sufficient funds will be available for the radiological decommissioning of the sites. If the staff identifies a funding shortfall, the NRC will evaluate any such scenario on a case-by-case basis. For an operating power reactor, the NRC reserves the right to take additional steps, in accordance with 10 CFR 50.75(e)(2), including reviewing the rate of accumulation of decommissioning funds, and to take additional actions, either independently or in cooperation with the Federal Energy Regulatory Commission and the licensee's State public utility commission, as appropriate. Additional actions may include modifying the licensee's schedule for accumulating decommissioning funds. In accordance with 10 CFR 50.82(c), if a licensee permanently ceases operation before the expiration of its license, the NRC will determine the collection period for any shortfall of funds on a case-by-case basis upon application by the licensee, and will consider the specific financial situation of each licensee. The NRR continues to monitor FENOC's decommissioning financial assurance for its reactors and ISFSIs to ensure adequate funding and compliance with requirements for decommissioning funding.

Bankruptcy Proceedings

On March 31, 2018, FES, FENOC, and NG, filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. FE has not filed for bankruptcy. The U.S. Department of Justice, and the NRC's Office of the General Counsel, are working closely together to represent the NRC's interests in the bankruptcy proceeding, including protection and preservation of the decommissioning trust funds and continued compliance with the requirements for decommissioning funding. The proceeding in the U.S. bankruptcy court may result in changes to FENOC's debt structure, including reorganization and the transfer of control of the reactor operating licenses. Any such license transfers would be subject to NRC review and approval. NRC license transfer reviews include, among other things, a review of the applicant's financial qualifications, technical qualifications, and decommissioning funding, and would provide for public participation and an opportunity to request a hearing and petition to intervene. While the bankruptcy proceeding is in progress, and until license termination, licensees are required to continue to comply with NRC regulations.

Additionally, on October 8, 2018, the petitioner submitted the transcript from the recent Federal court proceeding in the FES bankruptcy case to the NRC as a supplement to the petition (ADAMS Accession No. ML18282A242). The NRC staff reviewed this transcript and did not find any information in the supplement of which it was not previously aware or that warranted immediate action. The NRC will continue to monitor the bankruptcy proceedings and take action, as necessary, to ensure that the licensee

remains in compliance with the agency's regulations.

SAFSTOR

The petition ''urges the NRC to prohibit NG and FENOC from placing their nuclear facilities into SAFSTOR for purely financial reasons.'' Section 3.2.2, ''SAFSTOR'' of NUREG-0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' Supplement 1, ''Regarding the Decommissioning of Nuclear Power Plants,'' Volume 1, issued November 2002 (ADAMS Accession No. ML023470304), lists SAFSTOR as one of three options that the NRC finds acceptable for a licensee to use in decommissioning its facility. As such, SAFSTOR is an option currently available to FENOC.

The NRC is currently considering changes to its decommissioning requirements through rulemaking. The NRC expects to publish the proposed rule later this year in the **Federal Register**. After the agency publishes the proposed rule, members of the public will be able to access the rule through a link on the NRC's public Web site at *https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleDetails.html?id=49.* During the comment period, members of the public may submit their comments through a link on the NRC's Web site at: *https://www.regulations.gov/docket?D=NRC-2015-0070*.

III. Conclusion

In summary, the NRC has a comprehensive, regulation-based, framework that provides for oversight of a licensee's decommissioning funding during operation and decommissioning. The licensees' current decommissioning funding status report, dated March 24, 2017, indicates that the licensees met the minimum funding requirements for future radiological decommissioning of the NRC-licensed facilities for the 2017 reporting cycle, and that there were no shortfalls in decommissioning funding. If the NRC staff identifies a funding shortfall in its evaluation of the status reports, which were submitted to the NRC on March 15, 2019, the NRC will take appropriate action, including enforcement action, if necessary. Further, the NRC staff will continue to work with the U.S. Department of Justice to protect and preserve its interests in FENOC's compliance with decommissioning requirements in the bankruptcy proceeding. Based on the current information available, the NRC staff concludes that there is an insufficient basis to find that the licensees are out of compliance with the NRC's decommissioning financial assurance requirements. Therefore, based on the continuing oversight and actions described above, no further action is necessary at this time.

As a result of the NRC staff's evaluation, NRR has denied the petitioner's requests. The request to issue Demands for Information is denied because the licensees are required to provide the information requested, as applicable, in the decommissioning funding status reports. These decommissioning funding status reports were submitted to the NRC on March 15, 2019, and will undergo NRC review. The requests to issue a Notice of Violation and Notice of Civil Penalties to FE, FES, NG, and FENOC, and the request to issue an Order suspending NG's and FENOC's licenses, are denied as current information available to the NRC does not demonstrate that the entities are out of compliance with NRC regulations. Therefore, there is an insufficient basis on which to take enforcement action, issue civil penalties, or suspend a license.

In accordance with 10 CFR 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for Commission review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 3rd day of April, 2019.

For the Nuclear Regulatory Commission.

/RA/

Ho K. Nieh,

Director, Office of Nuclear Reactor Regulation.

Attachment: Petitioner's Comments on Proposed Director's Decision and NRC Response

ATTACHMENT

PETITIONER'S COMMENTS ON PROPOSED DIRECTOR'S DECISION AND NUCLEAR REGULATORY COMMISSION RESPONSE

The petitioner provided comments to the U.S. Nuclear Regulatory Commission (NRC) on the proposed director's decision (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18309A157) by letter dated January 22, 2019 (ADAMS Accession No. ML19037A340).

The petitioner's comments do not alter the staff's conclusions in the proposed director's decision and, therefore, do not require modification to the final director's decision. This attachment provides the petitioner's comments on the proposed director's decision and the NRC responses to the comments.

The petitioner's comments are summarized as follows:

Comment 1 (from the petitioner's letter dated January 22, 2019, pages 1 and 2):

The NRC staff should issue Demands for Information to immediately request the updated decommissioning funding status report from FirstEnergy Corp. (FE), FirstEnergy Solutions (FES), FirstEnergy Nuclear Generation, LLC (NG), and FirstEnergy Nuclear Operating Company (FENOC). Specifically, the NRC should order FE, FES, FENOC and NG to provide the most up-to-date information on decommissioning funds with respect to: site-specific funding plans (Request No. 1), reliance on any external funds or parent company guarantees (Request Nos. 2–4), proposed investment and financial contribution plans (Request No. 5), and commitments to guarantee coverage of shortfalls in light of bankruptcy (Request No. 6).

Response 1:

This comment restates the petitioner's original requests. As stated in the proposed director's decision, the next decommissioning funding status reports for Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit 1, and Perry Nuclear Power Plant, Unit 1 are due to the NRC by March 31, 2019, and were submitted on March 15, 2019 (ADAMS Accession No. ML19074A242). If the staff identifies a funding shortfall in those reports, the NRC will evaluate any such scenario on a case-by-case basis. For an operating power reactor, the NRC reserves the right to take additional steps, in accordance with paragraph 50.75(e)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), including reviewing the rate of accumulation of decommissioning funds, and to take additional actions, either independently or in cooperation with the Federal Energy Regulatory Commission and the licensee's State public utility commission, as appropriate. Additional actions may include modifying the licensee's schedule for accumulating decommissioning funds. In accordance with 10 CFR 50.82(c), if a licensee permanently ceases operation before the expiration of its license, the NRC will determine the collection period for any shortfall of funds on a case-by-case basis upon application by the licensee, and will consider the specific financial situation of each licensee. The NRC Office of Nuclear Reactor Regulation

continues to monitor FENOC's decommissioning financial assurance for its reactors and ISFSIs to ensure adequate funding and compliance with requirements for decommissioning funding.

The Petition Review Board (PRB) determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of this comment.

Comment 2 (from the petitioner's letter dated January 22, 2019, page 2):

The Environmental Law and Policy Center (ELPC) requested that the NRC postpone acting upon the proposed director's decision and hold open ELPC's petition until the NRC can review the December 31, 2018, decommissioning funding status information.

Response 2:

In the proposed director's decision, the NRC described the existing requirements and processes in place to monitor the decommissioning funding status of the licensees. If the report demonstrates that FENOC has sufficient funding in its trust, then no further action is necessary. For licensees that are no longer rate-regulated or do not have access to a non-bypassable charge, as is the case for FENOC and NG, any shortfalls identified in the report must be corrected by the time the next decommissioning funding status reports are due (March 31, 2020).

The PRB determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of this comment.

Comment 3 (from the petitioner's letter dated January 22, 2019, pages 2 and 3):

If the NRC does not act now to ensure that FES, FENOC, and NG reserve adequate funds for decommissioning, parent company FE could seek to fully extricate itself from any decommissioning obligations before the NRC can identify the extent of the funding shortfalls.

Response 3:

As stated in the proposed director's decision, the U.S. Department of Justice, and the NRC's Office of the General Counsel, are working closely together to represent the NRC's interests in the bankruptcy proceeding, including protection and preservation of the decommissioning trust funds and continued compliance with decommissioning requirements. The proceeding in the U.S. Bankruptcy Court may result in changes to FENOC's debt structure, including reorganization and the transfer of control of the reactor operating licenses. Any such license transfers would be subject to NRC review and approval. As such, NRC approval of a license transfer would be required before FE could be removed from the current corporate structure for purposes relating to NRC licensing. NRC license transfer reviews include, among other things, a review of the applicant's financial qualifications, technical qualifications, and decommissioning funding. To approve the license transfer, the NRC must find that the applicant has demonstrated that there is reasonable assurance that sufficient funds will be available for the decommissioning process. Ultimately, the licensee is responsible for compliance with NRC decommissioning financial assurance regulations, and the NRC will continue to monitor the remaining licensee's continued compliance. While the bankruptcy proceeding is in progress, and until license termination, licensees are required to continue to comply with NRC regulations.

The PRB determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of this comment.

Comment 4 (from the petitioner's letter dated January 22, 2019, page 3):

There is no suggestion in the proposed Director's Decision that the NRC has reviewed Chapter 11 monthly statements of financial affairs, nor that it has assessed the status of the Chapter 11 proceedings.

Response 4:

As stated in the proposed director's decision, the U.S. Department of Justice and the NRC's Office of the General Counsel are working closely together to represent the NRC's interests in the bankruptcy proceeding, including protection and preservation of the decommissioning trust funds and continued compliance with decommissioning requirements. The U.S. Department of Justice has reviewed Chapter 11 monthly statements of financial affairs, and is actively involved in the status of the Chapter 11 proceedings.

The PRB determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of this comment.

[FR Doc. 2019–06987 Filed 4–8–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 8, 15, 22, 29, May 6, 13, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 8, 2019

There are no meetings scheduled for the week of April 8, 2019.

Week of April 15, 2019—Tentative

There are no meetings scheduled for the week of April 15, 2019.

Week of April 22, 2019—Tentative

Tuesday, April 23, 2019

10:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Materials Users Business Lines (Public Meeting) (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 29, 2019—Tentative

Tuesday, April 30, 2019

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1)

Week of May 6, 2019—Tentative

There are no meetings scheduled for the week of May 6, 2019.

Week of May 13, 2019—Tentative

Tuesday, May 14, 2019

9:00 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Jason Paige: 301–415–1474)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, May 16, 2019

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)

2:00 p.m. Briefing on Security Issues (Closed Ex. 1)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of April 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–07068 Filed 4–5–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0087]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from March 12, 2019 to March 25, 2019. The last biweekly notice was published on March 26, 2019.

DATES: Comments must be filed by May 9, 2019. A request for a hearing must be filed by June 10, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0087. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.
- For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0087, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0087.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0087, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would

not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not

otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment application(s), see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: February 8, 2019. A publicly-available version is in ADAMS under Accession No. ML19039A126.

Description of amendment request: The amendment would adopt TSTF–564, ''Safety Limit MCPR [minimum critical power ratio],'' Revision 2, which

revises the Fermi 2 technical specification safety limit on minimum critical power ratio (SLMCPR) to reduce the need for cycle-specific changes to the value while still meeting the regulatory requirement for a safety limit. In addition, technical specification 5.6.5, ''Core Operating Limits Report (COLR),'' is revised to require the current SLMCPR value to be included in the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises the TS SLMCPR and the list of core operating limits to be included in the Core Operating Limits Report (COLR). The SLMCPR is not an initiator of any accident previously evaluated. The revised safety limit values continue to ensure for all accidents previously evaluated that the fuel cladding will be protected from failure due to transition boiling. The proposed change does not affect plant operation or any procedural or administrative controls on plant operation that affect the functions of preventing or mitigating any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment revises the TS SLMCPR and the list of core operating limits to be included in the COLR. The proposed change will not affect the design function or operation of any structures, systems or components (SSCs). No new equipment will be installed. As a result, the proposed change will not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises the TS SLMCPR and the list of core operating limits to be included in the COLR. This will result in a change to a safety limit, but will not result in a significant reduction in the margin of safety provided by the safety limit. As discussed in the application, changing the SLMCPR methodology to one based on a 95% probability with 95% confidence that no fuel rods experience transition boiling during an anticipated transient instead of the current limit based on ensuring that 99.9% of the fuel rods are not susceptible to boiling transition does not have a significant effect on plant response to any analyzed accident. The SLMCPR and the TS Llimiting Condition for Operation (LCO) on MCPR continue to provide the same level of assurance as the current limits and do not reduce a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David J. Wrona.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Entergy Operations, Inc.; System Energy Resources, Inc.; Cooperative Energy, A Mississippi Electric Cooperative; and Entergy Mississippi, LLC, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 31, 2019. A publicly-available version is in ADAMS under Accession No. ML19032A256.

Description of amendment request: The amendments would revise the technical specifications (TSs) for each of these facilities based on Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules,'' Revision 4 (ADAMS Accession No. ML16062A271). Specifically, the changes would revise and clarify the TS usage rules for completion times, limiting conditions for operation (LCOs), and surveillance requirements (SRs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Section 1.3 and LCO 3.0.4 have no effect on the requirement for systems to be Operable and have no effect on the application of TS actions. The proposed change to SR 3.0.3 (or equivalent) states that the allowance may only be used when there is a reasonable expectation the surveillance will be met when performed.

Since the proposed changes do not significantly affect system Operability, the proposed changes will have no significant effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the TS usage rules do not affect the design or function of any plant systems. The proposed changes do not change the Operability requirements for plant systems or the actions taken when plant systems are not operable.

Therefore, it is concluded that the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes clarify the application of Section 1.3 and LCO 3.0.4 and do not result in changes in plant operation. SR 3.0.3 (or equivalent) is revised to allow application of SR 3.0.3 when an SR has not been previously performed if there is reasonable expectation that the SR will be met when performed. This expands the use of SR 3.0.3 while ensuring the affected system is capable of performing its safety function. As a result, plant safety is either improved or unaffected.

Therefore, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anna Vinson Jones, Senior Counsel, Entergy Services,

Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (Limerick), Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: February 1, 2019, as supplemented by letter dated March 7, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML19032A624 and ML19066A162, respectively.

Description of amendment request: The proposed amendments would revise the technical specification (TS) requirements for these facilities related to the safety limit minimum critical power ratio (MCPR) and the core operating limits report (COLR). The proposed amendments are based on Technical Specification Task Force (TSTF) traveler TSTF–564, Revision 2, ''Safety Limit MCPR'' (ADAMS Accession No. ML18297A361). The proposed amendments for Limerick and FitzPatrick would also make changes to the MCPR and COLR requirements that are outside the scope of TSTF–564, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments revise the TS requirements for the safety limit MCPR and the list of core operating limits to be included in the COLR. The safety limit MCPR is not an initiator of any accident previously evaluated. The revised safety limit values will continue to ensure for all accidents previously evaluated that the fuel cladding will be protected from failure due to transition boiling. The proposed amendments for Limerick, Units 1 and 2, also include a revision to point to MCPR limits specified in the COLR and clarify references to other specifications. The proposed amendment for FitzPatrick also revises the COLR methodology references by deleting references that are no longer needed and clarifying the remaining reference. The proposed changes do not affect plant operation or any procedural or administrative controls on plant operation that affect the functions of preventing or mitigating any accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments revise the TS requirements for the safety limit MCPR and the list of core operating limits to be included in the COLR. The proposed amendments for Limerick, Units 1 and 2, also include a revision to point to MCPR limits specified in the COLR and clarify references to other specifications. The proposed amendment for FitzPatrick also revises the COLR methodology references by deleting references that are no longer needed and clarifying the remaining reference. The proposed change will not affect the design function or operation of any structures, systems or components. No new equipment will be installed. As a result, the proposed changes will not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

The proposed amendments revise the TS safety limit MCPR and the list of core operating limits to be included in the COLR. The proposed amendments for Limerick, Units 1 and 2, also include a revision to point to MCPR limits specified in the COLR and clarify references to other specifications. The proposed amendment for FitzPatrick also revises the COLR methodology references by deleting references that are no longer needed and clarifying the remaining reference. This will result in a change to a safety limit, but will not result in a significant reduction in the margin of safety provided by the safety limit. As discussed in the application, changing the safety limit MCPR methodology to one based on a 95 percent probability with 95 percent confidence that no fuel rods experience transition boiling during an anticipated transient instead of the current limit based on ensuring that 99.9 percent of the fuel rods are not susceptible to boiling transition does not have a significant effect on plant response to any analyzed accident.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–010, 50–237, and 50–249, Dresden Nuclear Power Station, Units 1, 2, and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–171, 50–277, and 50–278, Peach Bottom Atomic Power Station, Units 1, 2, and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 1, 2019. Publicly-available version is in ADAMS under Accession No. ML19063A685.

Description of amendment request: The amendments would revise the

emergency action levels (EALs) in the emergency plan for each site. The proposed changes are based primarily on the resolution of emergency preparedness frequently asked questions (EPFAQs) and industry best-practices. Editorial changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involving revisions to existing NRC-approved [Nuclear Energy Institute guidance document] NEI 99–01, Revision 6, EALs, as clarified by the NRC through the EPFAQ process, for the affected facilities do not reduce the capability to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR 50, Appendix E. The proposed changes do not reduce the functionality, performance, or capability of Exelon's ERO [emergency response organization] to respond in mitigating the consequences of any design basis accident.

The probability of a reactor accident requiring implementation of Emergency Plan EALs has no relevance in determining whether the proposed changes to the EALs reduce the effectiveness of the Emergency Plans. As discussed in Section D, ''Planning Basis,'' of NUREG–0654, Revision 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants;''

''. . . The overall objective of emergency response plans is to provide dose savings (and in some cases immediate life saving) for a spectrum of accidents that could produce offsite doses in excess of Protective Action Guides (PAGs). No single specific accident sequence should be isolated as the one for which to plan because each accident could have different consequences, both in nature and degree. Further, the range of possible selection for a planning basis is very large, starting with a zero point of requiring no planning at all because significant offsite radiological accident consequences are unlikely to occur, to planning for the worst possible accident, regardless of its extremely low likelihood. . . .''

Therefore, Exelon did not consider the risk insights regarding any specific accident initiation or progression in evaluating the proposed changes.

The proposed changes do not involve any physical changes to plant equipment or systems, nor do they alter the assumptions of any accident analyses. The proposed changes do not adversely affect accident initiators or precursors nor do they alter the design assumptions, conditions, and configuration or the manner in which the plants are operated and maintained. The proposed changes do not adversely affect the ability of Structures, Systems, or Components (SSCs) to perform their intended safety functions in mitigating the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involving revisions to existing NRC-approved NEI 99–01, Revision 6, EALs, as clarified by the NRC through the EPFAQ process, for the affected facilities do not involve any physical changes to plant systems or equipment. The proposed changes do not involve the addition of any new plant equipment. The proposed changes will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. Exelon ERO functions will continue to be performed as required. The proposed changes do not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involving revisions to existing NRC-approved NEI 99–01, Revision 6, EALs, as clarified by the NRC through the EPFAQ process, for the affected facilities do not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. There are no changes to setpoints or environmental conditions of any SSC or the manner in which any SSC is operated. Margins of safety are unaffected by the proposed changes to the EALs based on further NRC clarification through the EPFAQ. The applicable requirements of 10 CFR 50.47 and 10 CFR 50, Appendix E will continue to be met.

Therefore, the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois, and Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 5, 2018. A publicly-available version is in ADAMS under Accession No. ML18339A009.

Description of amendment request: The amendments would revise the technical specifications for both the single recirculation loop and two recirculation loop Safety Limit Minimum Critical Power Ratio (SLMCPR) limits for the DNPS and QCNPS units. The proposed decrease in these limits improves operational flexibility through the recapture of margins that are available as a result of the transition to Framatome, Inc. using NRC-approved SLMCPR calculation methodology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed SLMCPR values have been determined using NRC-approved methods discussed in AREVA Topical Report ANP–10307PA, Revision 0, ''AREVA MCPR Safety Limit Methodology for Boiling Water Reactors,'' dated June 2011. The proposed SLMCPRs for two recirculation loop and single recirculation loop operation ensure that the acceptance criterion continues to be met (*i.e.,* at least 99.9 percent of all fuel rods in the core do not experience boiling transition).

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed license amendments do not involve any plant modifications or operational changes that could affect system reliability or performance, or that could affect the probability of operator error. As such, the proposed changes do not affect any postulated accident precursors. Since no individual precursors of an accident are affected, the proposed license amendments do not involve a significant increase in the probability of a previously analyzed event.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The basis for the SLMCPR calculations is to ensure that during normal operation and during anticipated operational occurrences, at least 99.9 percent of all fuel

rods in the core do not experience boiling transition if the safety limit is not exceeded.

Based on these considerations, the proposed changes do not involve a significant increase in the consequences of a previously analyzed accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The SLMCPR is a TS numerical value calculated for two recirculation loop operation and single recirculation loop operation to ensure at least 99.9 percent of all fuel rods in the core do not experience boiling transition if the safety limit is not exceeded. SLMCPR values are calculated using NRC-approved methodology identified in the TSs. The proposed SLMCPR values do not involve any new modes of plant operation or any plant modifications and do not directly or indirectly affect the failure modes of any plant systems or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SLMCPR provides a margin of safety by ensuring that at least 99.9 percent of the fuel rods do not experience boiling transition during normal operation and anticipated operational occurrences if the MCPR Safety Limit is not exceeded. Revision of the SLMCPR values in TS 2.1.1.2, using an NRC-approved methodology, will ensure that the current level of fuel protection is maintained by continuing to ensure that the fuel design safety criterion is met (*i.e.,* that no more than 0.1 percent of the rods are expected to be in boiling transition if the MCPR Safety Limit is not exceeded). The SLMCPRs are verified to be bounding by cycle specific analyses prior to power operations for each operating cycle. Therefore, the proposed amendments do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorneys for licensee: Tamra (Tami) Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 2018. A publicly-available version is in ADAMS under Accession No. ML19045A282.

Description of amendment request: The amendment would revise Technical Specification (TS) 5.5.15, ''Containment Leakage Rate Testing Program,'' to reflect an increase to the existing Type A integrated leak rate test program test interval from 10 years to 15 years, in accordance with Nuclear Energy Institute (NEI) Report NEI 94–01, Revision 2–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J.'' The proposed change would also reflect adoption of both the use of American National Standards Institute/American Nuclear Society (ANSI/ANS) 56.8–2002, ''Containment System Leakage Testing Requirements,'' and a more conservative allowable test interval extension of 9 months for Type A leakage tests in accordance with NEI 94–01, Revision 2–A. The amendment would also make an administrative change to remove the exception under TS 5.5.15 for the one-time 15-year Type A test internal being performed after May 31, 1996, and performed prior to May 31, 2011, as this has already occurred.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activity involves the revision of the R. E. Ginna Nuclear Power Plant (GNPP) Technical Specification (TS) 5.5.15, ''Primary Containment Leakage Rate Testing Program,'' to allow the extension of the Type A Integrated Leakage Rate Test (ILRT) containment test interval to 15 years. Per the guidance provided in Nuclear Energy Institute (NEI) 94–01, Industry Guideline for Implementing Performance-Based Option of 10 CFR 50, Appendix J, Revision 2–A, the current Type A test interval of 10 years would be extended on a permanent basis to no longer than 15 years from the last Type A test.

The proposed interval extensions do not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

The change in Type A test frequency to once-per-fifteen-years, measured as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, based on the probabilistic risk assessment (PRA) is 0.29 person-Roentgen equivalent man (rem)/year. Electric Power Research Institute (EPRI) Report No. 1009325, Revision 2A states that a very small population dose is defined as an increase of less than 1.0 person-rem per year or less than 1 percent of the total population dose, whichever is less restrictive for the risk impact assessment of the extended ILRT intervals. This is consistent with the Nuclear Regulatory Commission (NRC) Final Safety Evaluation which endorsed NEI 94–01 and EPRI Report No. 1009325, Revision 2A. Moreover, the risk impact when compared to other severe accident risks is negligible. Therefore, the proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

In addition, as documented in NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, Types B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The GNPP Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based, and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' Containment Maintenance Rule Inspections, Containment Coatings Program and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test (ILRT). Based on the above, the proposed test interval extensions do not significantly increase the consequences of an accident previously evaluated.

This proposed amendment also deletes the exception previously granted to allow one-time extension of the ILRT test frequency for GNPP. Specifically, TS 5.5.15, item a. is deleted, as it requires the first Type A test performed after May 31, 1996, to be performed by May 31, 2011. This exception was included in the TS for one-time testing activities that would have already taken place by the time this amendment is approved; therefore, deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the GNPP TS 5.5.15 involves the extension of the GNPP Type A containment test interval from 10 years to 15 years. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident; thereby, do not involve any accident precursors or initiators.

The proposed change does not involve a physical modification to the plant (*i.e.,* no new or different type of equipment will be installed) nor does it alter the design, configuration, or change the manner in which the plant is operated or controlled beyond the standard functional capabilities of the equipment.

This proposed amendment also deletes the exception previously granted to allow one-time extension of the ILRT test frequency for GNPP. Specifically, TS 5.5.15, item a. is deleted, as it requires the first Type A test performed after May 31, 1996, to be performed by May 31, 2011. This exception was included in the TS for one-time testing activities that would have already taken place by the time this amendment is approved; therefore, deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to TS 5.5.15 involves the extension of the GNPP Type A containment test interval to 15 years. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves the extension of the interval between Type A containment leak rate tests for GNPP. The proposed surveillance interval extension is bounded by the 15-year ILRT interval currently authorized within NEI 94–01, Revision 2–A. Industry experience supports the conclusion that Types B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with Option B to 10 CFR 50, Appendix J and the overlapping inspection activities performed as part of ASME Section Xl, and the TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Types A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A test intervals.

In addition, this proposed amendment also deletes the exception previously granted to allow one-time extension of the ILRT test frequency for GNPP. Specifically, TS 5.5.15, item a. is deleted, as it requires the first Type A test performed after May 31, 1996, to be performed by May 31, 2011. This exception was included in the TS for one-time testing activities that would have already taken place by the time this amendment is approved; therefore, deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS), Ottawa County, Ohio

Date of amendment request: February 5, 2019. A publicly-available version is in ADAMS under Accession No. ML19036A523.

Description of amendment request: By letter dated April 25, 2018 (ADAMS Accession No. ML18115A007), FENOC notified the NRC that DBNPS will permanently cease power operations by May 31, 2020. The proposed amendment would revise the DBNPS renewed facility operating license (RFOL) and technical specifications (TSs) following the permanent cessation of power operations to reflect the post-shutdown and permanently defueled condition. The proposed amendment would eliminate TS requirements and license conditions which would not be applicable once DBNPS ceases power operations and can no longer place fuel in the reactor vessel. The proposed amendment would also eliminate obsolete license conditions. In addition, the proposed amendment would revise several license conditions and TS requirements, including limiting conditions for operation (LCOs), usage rules, definitions, surveillance requirements (SRs), and administrative controls. FENOC also proposed to revise the licensing bases for DBNPS, including the design bases accident (DBA) analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would not take effect until DBNPS has certified to the NRC that it has permanently ceased operation and entered a permanently defueled condition. Because the 10 CFR part 50 license for DBNPS will no longer authorize operation of the reactor, or emplacement or retention of fuel into the reactor vessel with the certifications required by 10 CFR part 50.82(a)(1) submitted, as specified in 10 CFR part 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible.

The remaining [Updated Final Safety Analysis Report] UFSAR Chapter 15 postulated design basis accident (DBA) events that could potentially occur at a permanently defueled facility would be a fuel handling accident (FHA) in the spent fuel pool (SFP), the waste gas decay tank rupture (WGDTR), and external causes. The FHA analyses for DBNPS shows that, following 95 days of decay time after reactor shutdown and provided the SFP water level requirements of TS LCO 3.7.14 are met, the dose consequences are acceptable without relying on structures, systems, and components (SSCs) to remain functional for accident mitigation during and following the event other than the passive SFP structure. The remaining DBAs that support the permanently shutdown and defueled condition do not rely on any active safety systems for mitigation.

The probability of occurrence of previously evaluated accidents is not increased, since safe storage and handling of fuel will be the only operations performed, and therefore, bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation

will no longer be credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

The deletion of TS definitions and rules of usage and application requirements that will not be applicable in a defueled condition has no impact on facility SSCs or the methods of operation of such SSCs. The deletion of design features and safety limits not applicable to the permanently shut down and defueled status of DBNPS has no impact on the remaining applicable DBAs.

The removal of LCOs or SRs that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents do not affect the applicable DBAs previously evaluated since these DBAs are no longer applicable in the permanently defueled condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to delete or modify certain DBNPS RFOL, TS, and current licensing bases (CLB) have no impact on facility SSCs affecting the safe storage of spent irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of spent irradiated fuel itself. The removal of TS that are related only to the operation of the nuclear reactor, or only to the prevention, diagnosis, or mitigation of reactor related transients or accidents, cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled.

The proposed modification or deletion of requirements of the DBNPS RFOL, TS, and CLB do not affect systems credited in the accident analysis for the remaining credible DBAs at DBNPS. The proposed RFOL and PDTS [permanently defueled TSs] will continue to require proper control and monitoring of safety significant parameters and activities. The TS regarding SFP water level and spent fuel storage is retained to preserve the current requirements for safe storage of irradiated fuel. The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (fuel cladding, spent fuel racks, SFP integrity, and SFP water level). Since extended operation in a defueled condition and safe fuel handling will be the only operation allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are to delete or modify certain RFOL, TS, and CLB once the DBNPS facility has been permanently shutdown and defueled. Because the 10 CFR part 50 license for DBNPS will no longer authorize operation of the reactor, or emplacement or retention of fuel into the reactor vessel, the occurrence of postulated accidents associated with reactor operation is no longer credible. The remaining postulated DBA events that could potentially occur at a permanently defueled facility would be a[n] FHA, WGDTR, and external causes. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses.

The proposed changes are limited to those portions of the RFOL, TS, and CLB that are not related to the safe storage of irradiated fuel. The requirements that are proposed to be revised or deleted from the RFOL, TS, and CLB are not credited in the updated applicable accident analysis for the remaining applicable postulated accidents, and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated design basis accidents involving the reactor will no longer be possible because the reactor will be permanently shutdown and defueled, and DBNPS will no longer be authorized to operate the reactor.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Rick Giannantonio, General Counsel, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: David J. Wrona.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: February 26, 2019. A publicly-available version is in ADAMS under Accession No. ML19060A060.

Description of amendment request: The proposed amendment would expand the criteria within technical specification (TS) 3.2.1 surveillance requirements to apply a revised penalty factor to measured transient $F_Q(Z)$ in response to Westinghouse Nuclear Safety Advisory Letter, NSAL–15–1, ''Heat Flux Hot Channel Factor Technical Specification Surveillance.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to add an additional surveillance requirement, to apply the penalty factor of 1.02 or a factor specified in the COLR [core operating limit report], whichever is greater, to the transient $F_Q(Z)$ calculation, ensures that the assumptions and inputs to the safety analyses remain valid and does not result in actions that would increase the probability or consequences of any accident previously evaluated.

The design of the protection systems will be unaffected. The reactor protection system and engineered safety feature actuation system will continue to function in a manner consistent with the plant design basis. All design, material and construction standards that were applicable prior to the request are maintained.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident-previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation in accordance with the revised TS and its limits precludes new challenges to systems or structures that might introduce a new type of accident. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The proposed change for resolution of Westinghouse NSAL–15–1 does not involve the alteration of plant equipment or introduce unique operational modes or accident precursors. Therefore it does not create the potential for a different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or, different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation in accordance with the revised TS and its limits preserves the margins assumed in the safety analyses. This ensures that all design and performance criteria associated with the safety analysis will continue to be met and that the margin of safety is not affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: February 26, 2019. A publicly-available version is in ADAMS under Accession No. ML19063A498.

Description of amendment request: The proposed amendment would adopt Technical Specification Task Force (TSTF) Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.'' TSTF–563 revises the TS definitions of Channel Calibration, Channel Operational Test, and Trip Actuating Device Operational Test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS [technical specification] definitions of Channel Calibration, COT [channel operational test], and TADOT [trip actuating device operational test] to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be tested. The frequency at which a channel test is performed is not an initiator of any accident previously evaluated, so the probability of an accident is not affected by the proposed change. The channels surveilled in accordance with the affected definitions continue to be required to be operable and the acceptance criteria of the surveillances are unchanged. As a result, any mitigating functions assumed in the accident analysis will continue to be performed.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident-previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, and TADOT to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The design function or operation of the components involved are not affected and there is no physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are introduced. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions.

Therefore, the proposed changes do not create the possibility of a new or, different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, and TADOT to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The Surveillance Frequency Control Program assures sufficient safety margins are maintained, and that design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plants' licensing basis. The proposed change does not adversely affect existing plant safety margins, or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by the method of determining surveillance test intervals under an NRC-approved licensee-controlled program.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham wCounty, New Hampshire

Date of amendment request: October 4, 2018. A publicly-available version is in ADAMS under Accession No. ML18277A377.

Description of amendment request: The amendment would revise the Seabrook Station, Unit No. 1 (Seabrook), Technical Specifications (TSs) and Surveillance Requirements (SRs) associated with the control rods. The amendment would adopt changes provided in Technical Specifications Task Force (TSTF) Traveler TSTF–234, ''Add Action for More than One [D]RPI [Digital Rod Position Indicator] Inoperable,'' and TSTF–547, ''Clarification of Rod Position Requirements,'' and make various other changes to align the Seabrook TSs more closely with NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants.'' In all, the amendment would revise SR 4.1.1.1.1, SR 4.1.1.2, TS 3.1.3.1, SR 4.1.3.1.1, TS 3.1.3.2, SR 4.1.3.2, TS 3.1.3.3, SR 4.1.3.3, TS 3.1.3.5, SR 4.1.3.5, TS 3.1.3.6, SR 4.1.3.6, TS 3.10.5, SR 4.10.5, and TS 6.8.1.6.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Control and shutdown rods are assumed to insert into the core to shut down the reactor in evaluated accidents. Rod insertion limits ensure that adequate negative reactivity is available to provide the assumed shutdown margin (SDM). Rod alignment limits maintain an appropriate power distribution and reactivity insertion profile.

Control and shutdown rods are initiators to several accidents previously evaluated, such as rod ejection. The proposed change does not change the limiting conditions for operation for the rods or make any technical changes to the surveillance requirements governing the rods. Therefore, the proposed change has no significant effect on the probability of any accident previously evaluated.

Adding new TS Actions to provide a limited time to repair rod control system failures has no effect on the SDM assumed in the accident analysis as the proposed Actions require verification that SDM is maintained. The effects on power distribution will not cause a significant increase in the consequences of any accident previously evaluated as all TS requirements on power distribution continue to be applicable.

The proposed change to resolve the conflicts in the TS ensures that the intended Actions are followed when equipment is inoperable. Actions taken with inoperable equipment are not assumptions in the accidents previously evaluated and have no significant effect on the consequences.

The capability of any operable TS-required equipment to perform its specified safety function is not impacted by the proposed change. As a result, the outcomes of accidents previously evaluated are unaffected. Therefore, the proposed changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not challenge the integrity or performance of any safety-related systems. No plant equipment is installed or removed, and the changes do not alter the design, physical configuration, or method of operation of any plant system or component. No physical changes are made to the plant, so no new causal mechanisms are introduced. Therefore, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The ability of the control rods to perform their designated safety function is unaffected by the proposed changes. The proposed changes do not alter any safety analyses assumptions, safety limits, limiting safety system settings, or method of operating the plant. The proposed change to provide time to repair rods that are operable but immovable does not result in a significant reduction in the margin of safety because all rods must be verified to be operable, and all other banks must be within the insertion limits. The changes do not adversely affect plant operating margins or the reliability of equipment credited in the safety analyses. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Debbie Hendell, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 27, 2019. A publicly-available version is in ADAMS under Accession No. ML19058A221.

Description of amendment request: The proposed change is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–546, Revision 0, ''Revise APRM [Average Power Range Monitor] Channel Adjustment Surveillance Requirement'' (ADAMS Accession No. ML17205A444). The amendment would alter Surveillance Requirement (SR) 4.3.1.1 of Technical Specification 3.3.1, ''Reactor Protection System Instrumentation.'' The change would revise the SR to verify that calculated (*i.e.,* calorimetric heat balance) power is no more than 2 percent greater than the APRM channel output. The SR requires the APRM channel to be adjusted such that calculated power is no more than 2 percent greater than the APRM indicated power when operating at ≥24 percent of rated thermal power. This change would revise the SR to distinguish between APRM indications that are consistent with the accident analyses and those that provide additional margin.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The APRM system and the RPS are not initiators of any accidents previously evaluated. As a result, the proposed change does not affect the probability of any accident previously evaluated. The APRM system and the Reactor Protection System (RPS) functions act to mitigate the consequences of accidents previously evaluated. The reliability of APRM system and the RPS is not significantly affected by removing the gain adjustment requirement on the APRM channels when the APRMs are calibrated conservatively with respect to the calculated heat balance. This is because the actual core thermal power at which the reactor will automatically trip is lower, thereby increasing the margin to the core thermal limits and the limiting safety system settings assumed in the safety analyses. The consequences of an accident during the adjustment of the APRM instrumentation are no different from those during the existing surveillance testing period or the existing time allowed to restore the instruments to operable status. As a result, the ability of the APRM system and the RPS to mitigate any accident previously evaluated is not significantly affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not alter the protection system design, create new failure modes, or change any modes of operation. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety provided by the APRM system and the RPS is to ensure that the reactor is shut down automatically when plant parameters exceed the setpoints for the system. Any reduction in the margin of safety resulting from the adjustment of the APRM channels while continuing operation is considered to be offset by delaying a plant shutdown (*i.e.,* a transient) for a short time with the APRM system, the primary indication of core power and an input to the RPS, not calibrated. Additionally, the short time period required for adjustment is consistent with the time allowed by Technical Specifications to restore the core power distribution parameters to within limits and is acceptable based on the low probability of a transient or design basis accident occurring simultaneously with inaccurate APRM channels.

The proposed change does not alter setpoints or limits established or assumed by the accident analyses. The Technical Specifications continue to require operability of the RPS functions, which provide core protection for postulated reactivity insertion events occurring during power operating conditions consistent with the plant safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

Tennessee Valley Authority (TVA), Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: October 12, 2018. A publicly-available version is in ADAMS under Accession No. ML18288A352.

Description of amendment request: The amendments would revise the Technical Specifications (TS) by the adoption, with administrative and technical variations, of Technical Specification Task Force (TSTF) Traveler TSTF–425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b.'' TSTF–425, Revision 3, provides for the relocation of specific surveillance frequencies to a licensee-controlled program. Additionally, the change would add a new program, the Surveillance Frequency Control Program (SFCP), to TS Section 5.0, ''Administrative Controls.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new SFCP. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for structures, systems, [and] components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), because these are not affected by changes to the surveillance frequencies. Similarly, there is no effect to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, TVA will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI [Nuclear Energy Institute] 04–10, Revision 1, in accordance with the TS SFCP. This methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 1, 2019. A publicly-available version is in ADAMS under Accession No. ML19032A632.

Description of amendment request: The amendments would adopt Technical Specification Task Force Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change revises the TS [Technical Specification] definitions of Channel Calibration, COT [Channel Operational Test], and TADOT [Trip Actuation Device Operational Test] to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be tested. The frequency at which a channel test is performed is not an initiator of any accident previously evaluated, so the probability of an accident is not affected by the proposed change. The channels surveilled in accordance with the affected definitions continue to be required to be operable and the acceptance criteria of the surveillances are unchanged. As a result, any mitigating functions assumed in the accident analysis will continue to be performed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, and TADOT to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The design function or operation of the components involved are not affected and there is no physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are introduced. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, and TADOT to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The Surveillance Frequency Control Program assures sufficient safety margins are maintained, and that design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the Nuclear Regulatory Commission (NRC)) will continue to be met as described in the plants' licensing basis. The proposed change does not adversely affect existing plant safety margins, or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by method of determining surveillance test intervals under an NRC-approved licensee-controlled program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Unit 1, Coffey County, Kansas

Date of amendment request: January 23, 2019, as supplemented by letter dated March 11, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML19036A772 and ML19078A131, respectively.)

Description of amendment request: The amendment would revise technical specification (TS) requirements in Section 1.3, ''Completion Times,'' and Section 3.0, ''Limiting Condition for Operation (LCO) Applicability,'' regarding LCO and surveillance requirement (SR) usage. The proposed changes are consistent with the NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, Revision 4, ''Clarify Use and Application Rules,'' using the consolidated line item improvement process (ADAMS Accession No. ML16062A271). The model safety evaluation was approved by the NRC in a letter dated April 21, 2016 (ADAMS Package Accession No. ML16060A441).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Section 1.3 and LCO 3.0.4 have no effect on the requirement for systems to be Operable and have no effect on the application of TS actions. The proposed change to SR 3.0.3 states that the allowance may only be used when there is a reasonable expectation the surveillance will be met when performed. Since the proposed change does not significantly affect system Operability, the proposed change will have no significant effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the TS usage rules does not affect the design or function of any plant systems. The proposed change does not change the Operability requirements for plant systems or the actions taken when plant systems are not operable.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the application of Section 1.3 and LCO 3.0.4 and does not result in changes in plant operation. SR 3.0.3 is revised to allow application of SR 3.0.3 when an SR has not been previously performed if there is reasonable expectation that the SR will be met when performed. This expands the use of SR 3.0.3 while ensuring the affected system is capable of performing its safety function. As a result, plant safety is either improved or unaffected.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 17th Street NW, Washington, DC 20036.

NRC Branch Chief: Robert J. Pascarelli.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 4, 2018, as supplemented by letter dated October 22, 2018.

Brief description of amendment: The amendment revised ACTION 18 in Technical Specifications Table 3.3–3, Functional Unit 7.e, ''Control Building Inlet Ventilation Radiation,'' for Millstone Power Station, Unit No. 3, to allow continued fuel handling and reactor operation with inoperable inlet radiation monitoring instrumentation provided that one train of the control room emergency ventilation system is operating in the emergency mode. The technical specification change specifies that one train of the control room emergency ventilation system be placed in the emergency mode of operation within 7 days if one radiation monitor channel is inoperable, or immediately, if both radiation monitor channels are inoperable.

Date of issuance: March 21, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 272. A publicly-available version is in ADAMS under Accession No. ML19042A277; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–49: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 17, 2018 (83 FR 33266). The supplemental letter dated October 22, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards

consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2019.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2 (Indian Point 1 and Indian Point 2), Westchester County, New York

Date of amendment request: June 20, 2018. A publicly-available version is in ADAMS under Accession No. ML18179A173.

Brief description of amendments: The amendments deleted certain license conditions from the Indian Point 1 and Indian Point 2 Operating Licenses that impose specific requirements on the decommissioning trust agreement. With approval of these amendments, the provisions of 10 CFR 50.75(h), which specify the regulatory requirements for decommissioning trust funds, apply to the licensee, Entergy Nuclear Operations, Inc., for Indian Point 1 and Indian Point 2.

Date of issuance: March 21, 2019.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment Nos.: 61 (Unit No. 1) and 289 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML19065A101; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Provisional Operating License No. DPR–5 and Renewed Facility Operating License No. DPR–26: The amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register****:* September 11, 2018 (83 FR 45984).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2019.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: March 26, 2018.

Brief description of amendment: The amendment revised the Updated Final Safety Analysis Report descriptions for the replacement of the Turbine First Stage Pressure output signals with Power Range Neutron Monitoring System output signals.

Date of issuance: March 12, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No: 217. A publicly-available version is in ADAMS under Accession No. ML18215A196; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–29: The amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register****:* June 5, 2018 (83 FR 26115).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2019.

No significant hazards consideration comments received: No.

Entergy Operations, Inc.; System Energy Resources, Inc.; Cooperative Energy, A Mississippi Electric Cooperative; and Entergy Mississippi, LLC, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of amendment request: April 27, 2018, as supplemented by letter dated October 10, 2018.

Brief description of amendment: The amendment revised the GGNS Emergency Plan to adopt an Emergency Action Level scheme based on Nuclear Energy Institute (NEI) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 2012, which was endorsed by the NRC by letter dated March 28, 2013.

Date of issuance: March 12, 2019.

Effective date: As of the date of issuance and shall be implemented within 365 days of issuance.

Amendment No: 216. A publicly-available version is in ADAMS under Accession No. ML19025A023; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–29: The amendment revised the GGNS Emergency Plan.

Date of initial notice in ***Federal Register****:* June 5, 2018 (83 FR 26104). The supplemental letter dated October 10, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–010, 50–237, and 50–249, Dresden Nuclear Power Station, Units 1, 2, and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: January 31, 2018, as supplemented by letters dated July 27 and November 29, 2018.

Brief description of amendments: The amendments revise the emergency response organization positions identified in the emergency plan for each site.

Date of issuance: March 21, 2019.

Effective date: As of the date of issuance and shall be implemented on or before December 31, 2019.

Amendment Nos.: Braidwood 201/201, Byron 206/206, Clinton 223, Dresden 46/261/254, LaSalle 236/222, and Quad Cities 274/269. A publicly-available version is in ADAMS under Accession No. ML19036A586. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–2, DPR–19, DPR–25, NPF–11, NPF–18, DPR–29, and DPR–30: Amendments revised the emergency plans.

Date of initial notice in ***Federal Register****:* April 10, 2018 (83 FR 15417).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated March 21, 2019.

No significant hazards consideration comments received: No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: May 14, 2018, as supplemented by letter dated November 20, 2018.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to increase the minimum load required for the Emergency Diesel Generator (EDG) partial-load rejection Surveillance Requirement (SR). Additionally, the amendments modified the EDG voltage and frequency limits for the SR and established a recovery period for the EDG(s) to return to steady-state conditions.

Date of issuance: March 18, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1, 285 and Unit 2, 279. A publicly-available version is in ADAMS under Accession No. ML18354A673; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* July 3, 2018 (83 FR 31185). The supplemental letter dated November 20, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket No. 52–025, Vogtle Electric Generating Plant (VEGP), Unit 3, Burke County, Georgia

Date of amendment request: October 19, 2018.

Description of amendment: The amendment authorizes the Southern Nuclear Operating Company to depart from certified AP1000 Design Control Document (DCD) Tier 2* material that has been incorporated into the Updated Final Safety Analysis Report (UFSAR). Specifically, the proposed departure consists of changes to Tier 2* information in the UFSAR (which includes the plant-specific DCD information) to change the vertical reinforcement information provided in the VEGP Unit 3 column line 1 wall from elevation 135′-3″ to 137′-0″ .

Date of issuance: March 13, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 156 for Unit 3. Publicly-available versions are in an ADAMS package under Accession No. ML19044A500 which includes the Safety Evaluation that references documents, located in that ADAMS package, related to this amendment.

Facility Combined Licenses No. NPF–91: Amendment revised the Facility Combined License.

Date of initial notice in ***Federal Register****:* November 20, 2018 (83 FR 58607).

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated March 13, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: March 5, 2018, as supplemented by letters dated April 27 and October 11, 2018.

Brief description of amendment: The amendment revised License Condition 2.C.(4), concerning the use of the PAD4TCD computer program. While the current License Condition permits the use of PAD4TCD for Unit 2, Cycles 1 and 2 only, the revision allows the use of PAD4TCD until the Unit 2 steam generators (SGs) are replaced with SGs equivalent to the existing SGs at Unit 1.

Date of issuance: March 20, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 26. A publicly-available version is in ADAMS under Accession No. ML19046A286; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–96: Amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register****:* December 4, 2018 (83 FR 62623). The supplemental letters dated April 27 and October 11, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: August 1, 2018, as supplemented by letter dated March 4, 2019.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to adopt, with minor variation, Technical Specification Task Force (TSTF) Traveler TSTF–266–A, Revision 3, ''Eliminate the Remote Shutdown System Table of Instrumentation and Controls.'' Specifically, the comparable TS Table 3.3.4–1, ''Remote Shutdown System Instrumentation and Controls,'' was deleted from Watts Bar, Units 1 and 2, TS 3.3.4, ''Remote Shutdown System.''

Date of issuance: March 18, 2019.

Effective date: As of the date of issuance and shall be implemented by March 24, 2019.

Amendment Nos.: 124 and 25. A publicly-available version is in ADAMS under Accession No. ML19066A009; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–90 and NPF–96: Amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* February 12, 2019 (84 FR 3510). The supplemental letter dated March 4, 2019, requested expedited completion of the NRC review of the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration (NSHC) determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments and final NSHC determination are contained in a Safety Evaluation dated March 18, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of March 2019.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–06449 Filed 4–8–19; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act: Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on April 16, 2019, 10:00 a.m. at the Board's meeting room on the 8th Floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion open to the public:

1. Impact of the SCOTUS Wisconsin Central decision and any necessary Board Action.

The person to contact for more information is Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

For the Board.

Dated: April 5, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–07123 Filed 4–5–19; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–217, OMB Control No. 3235–0241]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 206(4)–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and revision of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 206(4)–2 under the Investment Advisers Act of 1940—Custody of Funds or Securities of Clients by Investment Advisers.'' Rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)–2 requires each registered investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other ''qualified custodian.'' [1] The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.[2] If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.[3] The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients, and undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.[4] Unless client assets are maintained by an independent custodian (*i.e.,* a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board (''PCAOB'').[5]

The rule exempts advisers from the rule with respect to clients that are registered investment companies. Advisers to limited partnerships, limited liability companies and other pooled investment vehicles are excepted from the account statement delivery and deemed to comply with the annual surprise examination requirement if the limited partnerships, limited liability companies or pooled investment vehicles are subject to annual audit by an independent public accountant registered with, and subject to regular inspection by the PCAOB, and the audited financial statements are distributed to investors in the pools.[6] The rule also provides an exception to the surprise examination requirement for advisers that have custody because they have authority to deduct advisory fees from client accounts and advisers that have custody solely because a related person holds the adviser's client assets and the related person is operationally independent of the adviser.[7]

Advisory clients use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through these collections in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 7,216 advisers would be subject to the information collection burden under the rule 206(4)–2. The number of responses under rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities, and the number of investors in pooled investment vehicles that the adviser manages. It is estimated that the average number of responses annually for each respondent would be 6,830, and an average time of 0.00500 hour per response. The annual aggregate burden for all respondents to the requirements of rule 206(4)–2 is estimated to be 246,532 hours.

This collection of information is found at 17 CFR 275.206(4)–2 and is mandatory. Responses to the collection of information are not kept confidential. Commission-registered investment advisers are required to maintain and preserve certain information required under rule 206(4)–2 for five years. The long-term retention of these records is necessary for the Commission's examination program to ascertain compliance with the Investment Advisers Act.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[1] Rule 206(4)–2(a)(1).

[2] Rule 206(4)–2(a)(2).

[3] Rule 206(4)–2(a)(2).

[4] Rule 206(4)–2(a)(3), (4).

[5] Rule 206(4)–2(a)(6).

[6] Rule 206(4)–2(b)(4).

[7] Rule 206(4)–2(b)(3), (b)(6).

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Riddle, Acting Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06958 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 12:00 p.m. on Thursday, April 11, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 4, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07052 Filed 4–5–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85495; File No. SR–ICC–2019–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy

April 3, 2019.

I. Introduction

On February 6, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICC–2019–002) to formalize the ICC Risk Parameter Setting and Review Policy (''Risk Parameter Policy'').[3] The proposed rule change was published in the **Federal Register** on February 22, 2019.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would formalize the Risk Parameter Policy. The Risk Parameter Policy would explain ICC's process for setting and calibrating the core parameters of, and reviewing the assumptions underlying, the ICC Risk Management Model (the ''Model''). The Risk Parameter Policy would also explain the analyses that ICC performs to explore the sensitivity of the Model's outputs to certain core parameters.

A. Parameter Setting and Calibration

The Risk Parameter Policy would discuss the process of setting and reviewing the Model's core parameters and their underlying assumptions.[5] The Risk Parameter Policy would first list each of the Model's parameters and then summarize (i) the method used to review and set the parameter; (ii) the frequency of review; (iii) the group within ICC responsible for the review (Risk Management Department (''ICC Risk''), Risk Working Group (''RWG''), or Risk Committee (''RC''); and (iv) whether the review is statistical or non-statistical. The Risk Parameter Policy would then explain in detail the process for setting and reviewing the parameters, with the parameters categorized according to their associated component of the Model: (i) Liquidity charge; (ii) concentration charge; (iii) jump-to-default; (iv) interest rate sensitivity; (v) basis risk; and (vi) integrated spread response.

For the parameters associated with the liquidity charge, the Risk Parameter Policy would describe the parameters associated with index instruments and single-name instruments.[6] With respect to index instruments, the Risk Parameter Policy would specify how ICC Risk estimates the Bid Offer Widths (''BOWs'') for indices across volatile and extreme market conditions, in addition to how ICC Risk recognizes long-short benefits when computing portfolio-level index liquidity charges. With respect to single-name instruments, the Risk Parameter Policy would explain the parameters that ICC uses to incorporate a price-based BOW component and a spread-based BOW component into the liquidity charge. The Risk Parameter Policy would require ICC Risk to estimate and review the liquidity charge parameters and their underlying assumptions at least monthly and present the analysis and any proposed changes to the RWG for review.

For the parameters associated with the concentration charge, the Risk Parameter Policy would explain how ICC Risk establishes specific threshold levels for each index or SN Risk Factor (''RF'').[7] The thresholds would reflect the market depth and liquidity for the considered RFs. The concentration charges would apply to positions that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICC Rules or the Risk Parameter Policy. *Available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.*

[4] Securities Exchange Act Release No. 34–85157 (Feb. 15, 2019), 84 FR 5748 (Feb. 22, 2019) (SR–ICC–2019–002) (''Notice'').

[5] Notice, 84 FR at 5748.

[6] Notice, 84 FR at 5749.

[7] Notice, 84 FR at 5749. ICC deems each index, sub-index, or underlying SN reference entity a separate RF.

exceed those thresholds and would increase as the amount above the threshold increases. The Risk Parameter Policy would require ICC Risk to estimate and review the concentration charge parameters and their underlying assumptions at least monthly and present the analysis and any proposed changes to the RWG for review. Moreover, the Risk Parameter Policy would require ICC Risk to consult the RC if the review and analysis results in a proposed change that could impact total initial margin requirements by more than 5%. In that case, ICC Risk could not implement the proposed change without first obtaining a no-objection from the RC.

For the parameters associated with jump-to-default, the Risk Parameter Policy would categorize the parameters as either Loss-Given-Default (''LGD'') or Wrong-Way Risk (''WWR'').[8] LGD would consider possible loss resulting from a default while WWR would consider the strong adverse correlation between a default risk and the occurrence of large losses in a Clearing Participant's (''CP'') portfolio. The LGD parameters would measure losses associated with various credit events by constructing scenarios for anticipated recovery rates associated with those credit events. The Risk Parameter Policy would explain these scenarios and estimations and further explain computations for RF groups (''RFG'') [9] and related parameters. The Risk Parameter Policy would also explain the parameters used to quantify WWR, compute WWR jump-to-default requirements, and determine the level of collateral necessary to cover WWR. The Risk Parameter Policy would further explain the thresholds that are established as parameters for each RF generating exposure to WWR. Exposure to WWR beyond these thresholds would increase the amount of collateral needed to cover that exposure. The Risk Parameter Policy would require ICC Risk to estimate and review at least monthly the LGD and WWR parameters and their underlying assumptions and present the analysis and any proposed changes to the RWG for review. Moreover, the Risk Parameter Policy would require ICC Risk to consult the RC if the review and analysis results in a proposed change that could impact total initial margin requirements by more than 5%. In that case, ICC Risk could not implement the proposed change without first obtaining a no-objection from the RC.

For the parameters associated with interest rate sensitivity, the Risk Parameter Policy would specify how ICC Risk estimates the up and down parallel shifts for the US Dollar and Euro default-free discount term structures.[10] The interest rate sensitivity aspect of the Model would account for the risk associated with changes in the default-free discount term structure used to price CDS instruments. The Risk Parameter Policy would require ICC Risk to estimate and review the interest rate sensitivity parameters and their underlying assumptions at least monthly and present the analysis and any proposed changes to the RWG for review.

For the parameters associated with basis risk, the Risk Parameter Policy would explain how ICC Risk estimates the risk associated with the differences between the index instruments and their replicating baskets of single-name constituents.[11] As index-derived single-name positions and opposite single-name positions are offset, the Model would use the basis risk requirement to capture the differences between the trading characteristics of index instruments and their replicating baskets of single-name constituents. The Risk Parameter Policy would require ICC Risk to estimate and review the interest rate sensitivity parameters and their underlying assumptions at least monthly and present the analysis and any proposed changes to the RWG for review.

For the parameters associated with integrated spread response, the Risk Parameter Policy would classify them as either univariate or multivariate.[12] The Risk Parameter Policy would describe the estimation of the univariate parameters, including the consideration of time series analysis of credit spread log-returns. The Risk Parameter Policy would further explain how different mean absolute deviation estimates are obtained for each time series and explain the setting of the exponentially weighted moving average decay rate. The Risk Parameter Policy would also explain how ICC determines and reviews the multivariate parameters. Using a simulation framework, ICC would generate spread and recovery rate scenarios by means of copulas to integrate the univariate distributions that describe spread and RR fluctuations. The Risk Parameter Policy would describe the multivariate parameters that serve as inputs to the copula simulations. The Risk Parameter Policy would require ICC Risk to estimate and review the integrated spread response parameters and their underlying assumptions at least monthly and present the analysis and any proposed changes to the RWG for review.

B. Sensitivity Analysis

The Risk Parameter Policy would explain the analyses that ICC Risk performs to explore the sensitivity of the Model's outputs to certain core parameters.[13] The Risk Parameter Policy would divide sensitivity analyses into those that would include an ICC-wide portfolio impact study and those that would not. Moreover, the Risk Parameter Policy would require monthly summary reports to the RC or the RWG, depending on the parameter analyzed.

The Risk Parameter Policy would specify which parameters would be subject to a sensitivity analysis.[14] First, the Risk Parameter Policy would require a sensitivity analysis on those parameters that are calibrated on an ad-hoc basis rather than using a purely statistical approach. For example, the Risk Parameter Policy would describe how ICC conducts a sensitivity analysis on the univariate level integrated spread response parameters through alternative techniques to estimate the parameters that fit the standardized distributions to the observed credit spread log-return data. Second, the Risk Parameter Policy would require a sensitivity analysis for routine updates to statistical parameters, which occur daily or monthly. Finally, the Risk Parameter Policy would require a sensitivity analysis of other specific parameters, including portfolio benefits, WWR thresholds, and log-return mean absolute deviation estimates.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[15] For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act [16] and Rules 17Ad–22(b)(2),

[8] Notice, 84 FR at 5749.

[9] ICC deems a set of SN RFs related by a common parental ownership structure a RFG.

[10] Notice, 84 FR at 5749.

[11] Notice, 84 FR at 5749.

[12] Notice, 84 FR at 5749–5750.

[13] Notice, 84 FR at 5750.

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2)(C).

[16] 15 U.S.C. 78q–1(b)(3)(F).

17Ad–22(b)(3), and 17Ad–22(d)(8) thereunder.[17]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[18]

As discussed above, the proposed rule change would formalize ICC's Risk Parameter Policy. The Commission believes that, in general, the Risk Parameter Policy would help ensure the sound operation of ICC's Model. Specifically, the Commission believes that the Risk Parameter Policy, in describing in detail ICC's process for setting and reviewing the parameters of, and assumptions underlying, the Model, would help assure the soundness of the Model by ensuring that ICC has in place a standardized process for setting and reviewing the Model's parameters. Because the Model's parameters affect the output of the Model—ICC's margin requirements—the Commission believes that reviewing and setting the parameters and underlying assumptions is important to ensure the effective operation of the ICC's margin system. The Commission further believes that the Risk Parameter Policy, in requiring monthly parameter reviews and sensitivity analyses, and setting out the requirements for reporting the results of such reviews to the RWG and/or RC, would help assure that ICC personnel are informed of the results of such reviews and therefore able to take action to correct any issues with the Model's parameters or assumptions.

By helping to assure the sound operation of the Model and ICC's margin requirements, which ICC uses to manage the credit exposures associated with clearing security based swap transactions, the Commission believes that the proposed rule change would help improve ICC's ability to avoid the losses that could result from the miscalculation of ICC's credit exposures. Because such losses could disrupt ICC's ability to operate and thus promptly and accurately clear and settle security based swap transactions, the Commission finds the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions. Because such losses could also threaten access to securities and funds in ICC's control, the Commission finds the proposed rule change would help assure the safeguarding of securities and funds that are in the custody or control of ICC or for which it is responsible. Likewise, for both of these reasons, the Commission finds the proposed rule change would, in general, help protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[19]

B. Consistency With Rules 17Ad–22(b)(2) and 17Ad–22(b)(3)

Rule 17Ad–22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.[20] Rule 17Ad–22(b)(3) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.[21]

As discussed above, the Commission believes that the proposed rule change would help ensure the soundness of the Model by formalizing ICC's process for setting and reviewing the Model's parameters and underlying assumptions. The Commission believes that the proposed rule change would therefore help ICC to maintain margin requirements to limit its credit exposures to participants under normal market conditions. Moreover, as discussed above, the Risk Parameter Policy would also require that ICC Risk conduct parameter reviews and sensitivity analyses monthly, consistent with the requirement of Rule 17Ad–22(b)(2).[22] Finally, as discussed above, the Risk Parameter Policy would also require that ICC Risk report the results of its reviews to the RWG and/or RC and, in some cases, receive no-objection from the RC prior to making changes to the parameters or assumptions. The Commission believes that this aspect of the Risk Parameter Policy would help ICC to use risk-based models and parameters to set margin requirements by providing the RWG and/or RC an opportunity to correct any issues with the Model's parameters or assumptions. The Commission therefore finds that the proposed rule is consistent with is consistent with Rule 17Ad–22(b)(2).[23]

Moreover, the amount a CP must contribute to ICC's Guaranty Fund is equal to the expected losses to ICC associated with the default of that CP, calculated using ICC's stress test methodology, and taking into account, among other things, the loss after application of initial margin.[24] Thus, ICC's guaranty fund is based on the initial margin requirements. The Commission therefore believes that, in helping to maintain the soundness of ICC's Model, and therefore ICC's margin requirements, the proposed rule change would also help ICC to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. The Commission therefore finds that the proposed rule is consistent with is consistent with Rule 17Ad–22(b)(3).[25]

Therefore, for these reasons, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(b)(2) and 17Ad–22(b)(3).[26]

C. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act and to promote the effectiveness of ICC's risk management procedures.[27]

As described above, the proposed rule change would make ICC Risk responsible for conducting parameter reviews and sensitivity analyses on a monthly basis. ICC Risk would in turn consult with the RWG. For certain parameters, ICC risk would also consult

[17] 17 CFR 240.17Ad–22(b)(2), (b)(3), and (d)(8).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(b)(2).

[21] 17 CFR 240.17Ad–22(b)(3).

[22] 17 CFR 240.17Ad–22(b)(2).

[23] *Id.*

[24] *See* ICC Rule 801(a).

[25] 17 CFR 240.17Ad–22(b)(3).

[26] 17 CFR 240.17Ad–22(b)(2), (b)(3).

[27] 17 CFR 240.17Ad–22(d)(8).

the RC if the review and analysis results in a proposed change that could impact total initial margin requirements by more than 5%. In that case, ICC Risk could not implement the proposed change without first obtaining a no-objection from the RC. Finally, the Risk Parameter Policy would also require monthly summary reports of sensitivity analyses to the RC or the RWG, depending on the parameter analyzed.

The Commission believes that in assigning these responsibilities, the proposed rule change would establish governance arrangements relating to the Risk Parameter Policy that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act by clearly assigning and documenting responsibilities for reporting and acting on the results of the reviews of the Model's parameters and assumptions. Moreover, the Commission believes that by ensuring the RWG and RC are informed of the results of reviews, the Risk Parameter Policy would help promote the effectiveness of ICC's risk management procedures in thereby providing the RC and RWG an opportunity to correct any issues with the Model's parameters and underlying assumptions.

Therefore, for this reason, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8).[28]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[29] and Rules 17Ad–22(b)(2), 17Ad–22(b)(3), and 17Ad–22(d)(8) thereunder.[30]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[31] that the proposed rule change (SR–ICC–2019–002) be, and hereby is, approved.[32]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06927 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 240.17Ad–22(d)(8).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(b)(2), (b)(3), and (d)(8).

[31] 15 U.S.C. 78s(b)(2).

[32] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (''FIMSAC'') will hold a public meeting on Monday, April 15, 2019 at 9:30 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On March 21, 2019, the Commission published notice of the Committee meeting (Release No. 34–85383), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include updates and presentations from the FIMSAC subcommittees and a discussion on the transition away from LIBOR.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 4, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07053 Filed 4–5–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85499; File No. SR–FINRA–2019–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 7640B, Data Products Offered by NYSE

April 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 7640B (Data Products Offered By NYSE) to (1) describe FINRA's practices relating to the distribution of market data for over-the-counter (''OTC'') transactions in NMS stocks generated through the operation of the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE TRF'') by NYSE Market (DE), Inc. (''NYSE Market'') and its affiliate, New York Stock Exchange LLC (''NYSE''); and (2) identify NYSE products that distribute FINRA/NYSE TRF data to third parties.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The FINRA Trade Reporting Facilities (''TRFs'') are facilities for the reporting of OTC transactions in NMS stocks that allow the TRF ''Business Members,'' which themselves are affiliates of self-regulatory organizations (''SROs''), to retain commercial use of the market data reported to the respective TRFs.[4] The operation of each TRF is governed by a Limited Liability Company Agreement (the ''LLC Agreement'') between FINRA and the respective Business Member. (The LLC Agreements, which were submitted as part of the rule filings to establish the respective TRFs and subsequently amended and restated, appear in the FINRA Manual.)

Under the LLC Agreement, FINRA is the ''SRO Member'' and has sole regulatory responsibility for the TRF, including real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules and submission of proposed rule changes to the Commission. The Business Member under the LLC Agreement is primarily responsible for the management of the TRF's business affairs, which may not be conducted in a manner inconsistent with the regulatory and oversight functions of FINRA. Among other things, the Business Member establishes pricing for the TRF and is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from operation of the TRF. The Business Member also provides the ''user facing'' front-end technology used to operate the TRF and transmit in real time trade report data directly to the NMS securities information processors (''SIPs'') and to FINRA for audit trail purposes.

Under the terms of the business arrangement between FINRA and the Business Members, each TRF owns data resulting from its operation. Each Business Member has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use market data generated by its TRF, other than data generated exclusively for regulatory purposes (''covered market data''),[5] consistent with all applicable laws, rules and regulations, and has a contractual right to sell covered market data to third parties.[6] Accordingly, although the TRFs are facilities of FINRA, the Business Members have the right under the contractual arrangements establishing the TRFs to develop market data products using covered market data. As each Business Member is an affiliate of an SRO, use of TRF data is conducted through the Business Member's affiliated SRO, is subject to a separate proposed rule change filed with the Commission by the affiliate in its SRO capacity and must satisfy the appropriate statutory standards.

In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, including discussion of, among other things: (1) Any system outages or issues since the prior monthly conference call (as well as any applicable reporting to FINRA and the SEC), (2) the status of pending systems changes, and (3) TRF market data products, including data latency and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Members to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

Under the TRF framework, the Business Member must ensure, among other things, that the distribution and sale of market data products that use TRF data are consistent with the requirements of the Act. In addition to FINRA's general oversight of TRF operations, and in furtherance of FINRA's SRO responsibilities with respect to OTC market data, FINRA requires that each Business Member (and its SRO affiliate) make specific commitments and undertakings with respect to its products that use TRF data. Among other things, the Business Member will, consistent with the Commission's interpretation of Rule 603(a) under SEC Regulation NMS, take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that it does not transmit TRF transaction data to vendors or users any sooner than the TRF transmits the data to the SIPs.[7] The Business Member also must have in place procedures and controls to ensure that its products that use TRF data are not distributed prior to dissemination of TRF data to the SIPs, including monitoring for compliance with this obligation.

In this regard, NYSE, the Business Member's affiliated SRO, has tools to compare the time of transmission of

[4] The establishment of each TRF was subject to a proposed rule change filed with the Commission. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR–NASD–2005–087); Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR–NASD–2007–011); and Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (Order Approving File No. SR–FINRA–2018–013).

[5] For purposes of proposed Rule 7640B, ''covered market data'' would be defined as market data generated by the FINRA/NYSE TRF, other than data generated exclusively for regulatory purposes.

[6] Under the TRF contracts, FINRA has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use the data generated by the TRF to fulfill its contractual rights and obligations, as well as its obligations as an SRO.

[7] Rule 603(a), 17 CFR 242.603(a), provides as follows:

(1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission stated that ''adopted Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.'' *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37567 (June 29, 2005) (Adopting Release; File No. S7–10–04).

In a subsequent order, the Commission stated that ''exchanges have an obligation under Rule 603(a) to take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that they release data relating to current best-priced quotations and trades through proprietary feeds no sooner than they release data to the Network Processor, including during periods of heavy trading.'' *See* Securities Exchange Act Release No. 67857 (September 14, 2012) (Order Instituting Administrative and Cease-and-Desist Proceedings; File No. 3–15023).

data to the SIPs and to NYSE's proprietary data feeds that use corresponding data to determine whether data was transmitted to a proprietary vendor or user sooner than to the SIPs. In addition, NYSE monitors the overall operational performance of its proprietary and SIP market data feeds intraday and has developed escalation and reporting procedures in the event that issues are detected. NYSE has represented to FINRA that these tools and procedures would be used for purposes of monitoring for potential latency for any future real-time products developed by NYSE that use and distribute FINRA/NYSE TRF data (provided such data is also required to be provided to the SIPs).

As further detailed below, NYSE will be adding FINRA/NYSE TRF transaction data to its existing data feeds, and, as such, NYSE will leverage the existing Rule 603(a) compliance programs for those data feeds for purposes of ensuring compliant distribution of FINRA/NYSE TRF transaction data contained therein.

Proposed FINRA Rule 7640B

FINRA is proposing to adopt new Rule 7640B to address the distribution of FINRA/NYSE TRF data in market data products developed by NYSE. Proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the distribution of FINRA/Nasdaq TRF data in market data products developed by Nasdaq, Inc., as the FINRA/Nasdaq TRF Business Member, and its wholly owned SRO subsidiary, The NASDAQ Stock Market LLC. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.[8]

As noted above, the FINRA/NYSE TRF is a facility of FINRA and FINRA/NYSE TRF data is OTC data for which FINRA is responsible under the Act. However, any market data products would be distributed and sold by NYSE Market, the Business Member, through NYSE, its affiliated SRO, not FINRA. As such, paragraphs (a) and (b) of proposed Rule 7640B codify the contractual arrangements between FINRA and NYSE Market and provide for the overall structure relating to the FINRA/NYSE TRF and the permissible use of FINRA/NYSE TRF data. For example, proposed paragraph (b) provides that fees for market data products that use covered market data are charged by NYSE pursuant to an NYSE rule filing.[9] Such fees must be adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, and NYSE must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. Paragraph (c) of proposed Rule 7640B identifies NYSE products that use FINRA/NYSE TRF data pursuant to a proposed rule change filed by NYSE with the Commission, and specifically the NYSE Trades market data feed[10] and NYSE BQT market data feed.[11]

FINRA notes that pursuant to the Consolidated Tape Association (''CTA'') Plan and the Nasdaq Unlisted Trading Privileges (''UTP'') Plan, if a proprietary feed includes trades reported by the TRF to the SIP processor, then the TRF must also furnish the SIP processor with the time of the transmission as published on the proprietary feed.[12] This time stamp is in addition to the time of the transaction, which, for TRF trades, is the time of execution that a FINRA member reports to a TRF in accordance with FINRA rules. FINRA/NYSE TRF data will not be included in the NYSE Trades market data feed and the NYSE BQT market data feed until the required systems changes have been made to enable the FINRA/NYSE TRF to provide the SIP processor [sic] with the time of transmission as published on the feeds.

NYSE Trades Market Data Feed

Pursuant to proposed rule change SR–NYSE–2019–06, NYSE is proposing to enhance the content of the NYSE Trades market data feed product offering by adding FINRA/NYSE TRF data.[13] As noted in its filing, NYSE is not proposing to revise the fees for the NYSE Trades feed in conjunction with this enhancement. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.[14]

As described in proposed rule change SR–NYSE–2019–06, NYSE Trades is an NYSE-only last sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to receive on a real-time basis the same last sale information that NYSE reports under the CTA Plan and the UTP Plan for inclusion in the CTA and UTP SIP consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on NYSE, the real-time last sale price, time and size information, and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.

NYSE is proposing to enhance the content of the NYSE Trades feed by including information for OTC trades in NMS stocks reported to the FINRA/NYSE TRF. The FINRA/NYSE TRF data disseminated via the NYSE Trades feed would include the same real-time last sale price, time and size information for each trade reported to the FINRA/NYSE TRF that the FINRA/NYSE TRF reports under the CTA Plan and UTP Plan for inclusion in the CTA and UTP SIP consolidated data streams. The FINRA/NYSE TRF data would also identify whether the trade was reported to the FINRA/NYSE TRF on a T+1 (or greater) basis. Unlike for securities traded on NYSE, the FINRA/NYSE TRF data would not include a stock summary message, which relates to exchange-specific activity only. FINRA/NYSE TRF trades would clearly be denoted as such in the NYSE Trades feed to ensure that they are not mistaken for trades executed on the exchange.[15]

NYSE has represented to FINRA that the NYSE Trades feed is already architected so that trades on the NYSE

[8] *See* Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–045).

[9] FINRA notes that such fees can be found in the ''NYSE PDP Market Data Pricing'' fee schedule, available at *www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.*

[10] *See* Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR–NYSE–2009–04); Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2013–23); Securities Exchange Act Release No. 70066 (July 30, 2013), 78 FR 47474 (August 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2013–53); and Securities Exchange Act Release No. 76599 (December 9, 2015), 80 FR 77676 (December 15, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2015–65).

[11] *See* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (Order Approving File No. SR–NYSE–2014–40); and Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2018–22).

[12] *See* CTA Plan Section VI(c) and UTP Plan Section VIII.B.

[13] *See* Securities Exchange Act Release No. 85186 (February 25, 2019), 84 FR 7156 (March 1, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2019–06).

[14] *See, e.g.,* Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR–NYSE–2009–04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2013–23).

[15] FINRA notes that FINRA/NYSE TRF and exchange activity also must be separate and distinct and cannot be commingled in volume and market share statistics in the aggregate.

platforms are transmitted to the SIPs before being transmitted to the NYSE Trades feed. The addition of FINRA/NYSE TRF data to the NYSE Trades feed will follow a similar protocol. OTC trades reported by the FINRA/NYSE TRF are presently transmitted to the SIPs by the same systems that transmit NYSE trades to the SIPs, and the same architecture can be leveraged to ensure that the sequencing of transmission of OTC trades is to the SIPs first and to the NYSE Trades feed second. Once FINRA/NYSE TRF data is added to the NYSE Trades feed, NYSE, the Business Member's affiliated SRO, will continue to take reasonable steps to ensure its distribution of the NYSE Trades feed complies with Rule 603(a) through its existing compliance monitoring program for same.

NYSE BQT Data Feed

With this proposed rule change, FINRA/NYSE TRF data disseminated via the NYSE Trades feed would also be included as part of the NYSE BQT data feed. As described in proposed rule change SR–NYSE–2019–06, the NYSE BQT data feed provides a unified view of best bid and offer (''BBO'') and last sale information for NYSE and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE National, Inc. (''NYSE National'') and NYSE American LLC (''NYSE American''), and consists of data elements from eight existing market data feeds: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE National BBO, NYSE National Trades, NYSE American Trades and NYSE American BBO. The NYSE BQT data feed would, therefore, include the FINRA/NYSE TRF data as part of the data it receives via the NYSE Trades market data feed. NYSE is not proposing to amend the fees for the NYSE BQT data feed. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.[16]

NYSE has represented to FINRA that because the NYSE BQT feed is, by design, always more latent than the NYSE Trades feed, the above-described Rule 603(a) compliance program for the NYSE Trades feed is sufficient to assure that distribution of FINRA/NYSE TRF data via the NYSE BQT feed also satisfies Rule 603(a). FINRA will periodically reassess satisfaction with this requirement as part of its regular oversight of the FINRA/NYSE TRF.

FINRA believes that NYSE's proposed use of FINRA/NYSE TRF data in the NYSE Trades and NYSE BQT feeds satisfies the requirement that FINRA/NYSE TRF transaction data not be transmitted to a vendor or user any sooner than such data is transmitted to the SIPs. As part of FINRA's regular oversight of the FINRA/NYSE TRF, FINRA will review for such compliance.

FINRA anticipates that for any future products developed by NYSE that use FINRA/NYSE TRF data, NYSE will submit a proposed rule change and FINRA will submit a companion filing proposing to amend Rule 7640B(c). In addition, NYSE Market and NYSE will be required to make the specific commitments and undertakings described above regarding the inclusion of FINRA/NYSE TRF data in any new data offering.[17]

FINRA has filed the proposed rule change for immediate effectiveness. The proposed rule change will be operative on April 29, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules 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. FINRA believes that the proposed rule change will promote market transparency by allowing the development by NYSE, consistent with the guidelines set forth in proposed Rule 7640B, of market data products using FINRA/NYSE TRF data for distribution to FINRA/NYSE TRF participants, other market participants and the investing public. FINRA notes that proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the inclusion of FINRA/Nasdaq TRF data in market data products offered by Nasdaq. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.[19]

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[20] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As noted above, the fees for the NYSE Trades and NYSE BQT feeds will not be charged by FINRA under FINRA rules, but rather will be charged by NYSE pursuant to NYSE filings. Such fees have been adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, in which NYSE was required to demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory.[21]

FINRA believes that the proposed rule change is consistent with the Act because subscription to the NYSE Trades and NYSE BQT feeds is not mandatory and NYSE's fees for the feeds apply uniformly to all members and other market participants that elect to subscribe to the products. In addition, FINRA believes that, as described in proposed rule change SR–NYSE–2019–06, the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained)—including real-time consolidated data, free delayed consolidated data and proprietary data from other sources—ensures that NYSE is not unreasonably discriminatory because vendors and subscribers can elect alternatives. As further noted in SR–NYSE–2019–06, the enhanced products would be available to all market participants on an equivalent basis with no change in price.

Finally, FINRA believes that use of FINRA/NYSE TRF market data, as set forth in proposed Rule 7640B, is consistent with Rule 603(a) of SEC Regulation NMS, which requires, among other things, that distributions of certain data by FINRA not be unreasonably

[16] *See, e.g.,* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2014–64); and Securities Exchange Act Release No. 83360 (June 1, 2018), 83 FR 26511 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2018–24).

[17] FINRA notes that FINRA and NYSE occasionally provide FINRA/NYSE TRF data to the Commission, other government agencies and members of the academic community for the purpose of studying the market. While in the latter case, data generally is in an aggregated format that does not allow identification of the activity of specific market participants, FINRA on occasion may provide attributed data to the academic community pursuant to a non-disclosure agreement.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] *See* Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–045).

[20] 15 U.S.C. 78*o*–3(b)(5).

[21] *See, e.g.,* Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR–NYSE–2009–04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2013–23).

discriminatory.[22] The Commission clarified in its adopting release that SEC Regulation NMS prohibits an SRO from transmitting quotation and transaction data to a vendor or user any sooner than it transmits the data to a network processor. As discussed above, NYSE, the Business Member's affiliated SRO, must ensure that distribution of market data products that use FINRA/NYSE TRF data is consistent with this requirement, and FINRA will require that NYSE Market and NYSE make specific commitments and undertakings, including real-time monitoring for potential data latency, with respect to all FINRA/NYSE TRF data products.

B. Self-Regulatory Organization's Statement on Burden on Competition Regulatory Need

As discussed in SR–NYSE–2019–06, NYSE proposes to enhance the content of its proprietary data feeds by disseminating the FINRA/NYSE TRF data via the NYSE Trades and NYSE BQT data feeds. NYSE expects that the proposed addition to the data feeds would enable NYSE to better compete with Nasdaq, which already offers FINRA/Nasdaq TRF data in its data feeds to subscribers. NYSE underlines the motivation of the proposal by stating in its filing that ''the proposal would improve the content included in the NYSE Trades feed and provide investors with an additional option for accessing information that may help to inform their trading decisions.''

Economic Baseline

Proprietary market data is produced by trading and quoting activity at each individual exchange, as well as other entities in the OTC market, such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks. Exchanges compete with each other for the dissemination of market data, which is used by different types of consumers for varying needs, such as observing the overall trading activity and price discovery.[23]

The FINRA/NYSE TRF is one of the TRFs that are [sic] used to report OTC trades in NMS stocks. Activity reported to the FINRA/NYSE TRF constitutes a relatively smaller [sic] part of the overall trades in the NMS market. In 2018, FINRA/NYSE TRF reports accounted for 5.06% of all SIP-reported share volume and 2.41% of all SIP-reported trades. As a percentage of aggregate TRF SIP-reported activity, the FINRA/NYSE TRF accounted for 13.93% of the share volume and 10.92% of the trades.

Economic Impacts

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 establishes the framework for the use of FINRA/NYSE TRF data in products developed by NYSE while ensuring that the dissemination of such data by NYSE is subject to the oversight of FINRA. The proposed FINRA rule merely codifies this structure. Therefore, FINRA estimates that there are potentially no material impacts stemming from the proposed rule change.

FINRA believes that the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained)—including real-time consolidated data, free delayed consolidated data and proprietary data from other sources—is a strong incentive to NYSE to avoid setting unreasonable or discriminatory fees. As noted in its filing, NYSE is not proposing to amend the fees for the NYSE Trades and NYSE BQT feeds in conjunction with this additional feature. Subscription to the NYSE feeds is wholly voluntary, and members and other market participants can elect not to buy any products that, in their determination, would not add value or enhance their business model. As discussed above, there are alternative products where FINRA/NYSE TRF data will continue to be provided to the users of such data.

Alternatives Considered

No other alternatives were considered for the proposed rule change.

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[24] and Rule 19b–4(f)(6) thereunder.[25]

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–2019–007 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–2019–007. 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

[22] *See* Rule 603(a)(2) of SEC Regulation NMS.

[23] *See* Jones (2018) for a discussion of the market data at *https://www0.gsb.columbia.edu/faculty/cjones/papers/2018.08.31%20US%20Equity%20Market%20Data%20Paper.pdf.*

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

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–2019–007, and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–147, OMB Control No. 3235–0131]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17a–7

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–7 (17 CFR 240.17a–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–7 requires a non-resident broker-dealer (generally, a broker-dealer with its principal place of business in a place not subject to the jurisdiction of the United States) registered or applying for registration pursuant to Section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Exchange Act and furnish to the Commission a written notice specifying the address where the copies are located. Alternatively, Rule 17a–7 provides that non-resident broker-dealers may file with the Commission a written undertaking to furnish the requisite books and records to the Commission upon demand within 14 days of the demand.

There are approximately 31 non-resident brokers and dealers. Based on the Commission's experience, the Commission estimates that the average amount of time necessary to comply with Rule 17a–7 is one hour per year. Accordingly, the total industry-wide reporting burden is approximately 31 hours per year. Assuming an average cost per hour of approximately $314 for a compliance manager, the total internal cost of compliance for the respondents is approximately $9,734 per year.[1]

Written 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 Commission'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; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 4, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06959 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

[1] $314 per hour for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff for an 1800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85494; File No. SR–NYSEArca–2019–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.40–O To Reduce the Minimum Allowable Parameter for the Percentage-Based Risk Limitation Mechanism

April 3, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 22, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.40–O (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.40–O (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism.

Risk Limitation Mechanisms

Rule 6.40–O sets forth the risk-limitation system, which is designed to help Market Makers, as well as OTP Holder and OTP Firms (collectively, ''OTPs''), better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.[4] The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.[5] The Exchange permits, but does not require, OTPs to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings are breached.[6]

Pursuant to Rule 6.40–O, the Exchange establishes a time period during which the System calculates for quotes and orders, respectively: (1) The number of trades executed by the Market Maker or OTP in a particular options class (''transaction-based''); (2) the volume of contracts traded by the Market Maker or OTP in a particular options class (''volume-based''); or (3) the aggregate percentage of the Market Maker's quoted size or OTP's order size(s) executed in a particular options class (''percentage-based'') (collectively, the ''risk settings'').[7] If a risk setting is triggered the System will cancel all of the Market Maker's quotes or the OTP's open orders in that class until the Market Maker or OTP notifies the Exchange it will resume submitting quotes or orders.[8] The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or OTPs to re-evaluate their positions before requesting to re-enter the market.

Proposed Change to Minimum Parameter for Percentage-Based Risk Setting

Per Commentary .03 to Rule 6.40–O, the Exchange establishes outside allowable parameters for each risk setting and announces by Trader Update ''any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms'' that are at or within these outside parameters. OTPs, in turn, adjust their own risk settings within the Exchange-established parameters, based on risk tolerance, taking into account such factors as present and anticipated market conditions, news in an option, and/or sudden change in volatility of an option. Put another way, the rule sets forth the minimum/maximum for each risk setting and the Exchange may, but does not have to, use these settings. However, the Exchange may instead choose settings that are higher than the minimum and lower than the maximum settings (*i.e.,* if the rule allows a minimum of 1 and a maximum of 10, the Exchange could use these parameters or could instead establish a minimum of 3 and a maximum of 7). Once the Exchange determines and announces the applicable parameters for each risk setting, the ATP Holder, in turn, selects a setting within the Exchange announced parameters that suits their risk tolerance (*i.e.,* assuming the Exchange selected a minimum of 3 and a maximum of 7, the ATP Holder may select a setting of 3, 4, 5, 6 or 7).

The Exchange proposes to adjust the minimum allowable parameter as established by Rule for the percentage-based risk setting from 100 percent to 1 percent (the ''Minimum Parameter'').[9] The following illustrates the potential impact of the Exchange setting the reducing the minimum threshold from 100 percent to 1 percent:

If a market participant has interest in two series of the same underlying, A and B, for 10 contracts each, the participant uses the percentage-based risk setting, and the exposure risk is set to 100 percent, an execution in series A for 10 contracts will result in the interest in series B being canceled. However, if the execution in series A is for 9 contracts (as opposed to 10), the interest in series B would not be cancelled. If there is a subsequent execution within the time period [10] in series B for any number of contracts or for the remaining contract in series A, the remaining interest in series A and B will be canceled.

If the same facts as above, but instead, the participant's exposure risk is set to 1 percent (as opposed to 100 percent), an execution in series A for any number of contracts, will result in the remaining interest in series A and B being canceled.

As indicated above, the proposed reduction of the Minimum Parameter was specifically requested by some OTPs and would inure to their benefit as it would allow the Exchange to offer more sensitive risk controls. The Exchange notes that it is not modifying the maximum threshold for the percentage-based setting, which provides OTPs, and Market Makers in particular, the ability to more finely calibrate their risk exposure. The Exchange has not modified this Minimum Parameter since implementing the risk settings in 2012.[11] The Exchange believes a modification to the Minimum Parameter would account for increased market volatility and fragmentation, as well as

[4] Market Makers are included in the definition of OTPs and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Markers from OTPs when discussing the risk limitation mechanisms. *See* Rule 1.1(nn) (defining OTP Holder as ''a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee'' that is ''a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities''). *See also* Rule 6.32–O(a) (defining a Market Maker as an individual ''registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system'').

[5] *See* Rule 6.40–O, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

[6] *See* Rule 6.40–O, Commentary .04(b) (providing that OTPs may avail themselves of one of the three risk limitation mechanisms for certain of their orders) and Commentary .01 (regarding the cancellation of orders once the risk settings have been breached).

[7] *See* Rule 6.40–O (b)–(d) (setting forth the three risk limitation mechanisms available). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. *See also* Commentary .08 to Rule 6.40–O.

[8] *See* Commentaries .01 and .02 to Rule 6.40–O (requiring that a Market Maker or OTP Holder request that it be re-enabled after a breach of its risk settings).

[9] *See* proposed Commentary .03 to Rule 6.40–O. The manner in which Rule 6.40–O operates is not being amended in this rule change.

[10] *See* Commentary .03 to Rule 6.40 (providing that the Exchange will specify via Trader Update ''any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds'').

[11] *See* Securities Exchange Act Release No. 67714 (August 22, 2012), 77 FR 52104 [sic] (August 28, 2012) (NYSEArca–2012–87). In 2016, the Exchange modified only the upper bound of the percentage-based (as well as the upper bound of the volume-based) risk setting. At that time, the Exchange also modified both the upper and lower bound of the transaction-based setting. *See* Securities Exchange Act Release No. 79469 (December 5, 2016), 81 FR 89171 (December 9, 2016) (NYSEArca–2016–155).

the ever-increasing automation, speed and volume transacted in today's electronic trading environment. In this regard, this proposed change would provide the Exchange with more flexibility within which to establish the lower bound risk parameter for OTPs that use this risk setting. To the extent this flexibility is utilized, the Exchange believes this should afford such OTPs the ability to better calibrate and manage risk.[12]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

OTPs are vulnerable to the risk from a system or other error or a market event that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their exposure in the market. Without adequate risk management tools, such as the available risk settings, OTPs may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. The Exchange believes that the proposed Minimum Parameter, which setting has not been modified since it was adopted in 2012, removes impediments to and perfects the mechanism of a free and open market by providing the Exchange with more flexibility within which to establish the appropriate lower bound of the percentage-based setting, in consideration of market conditions, which would enable this risk setting to operate in the manner intended to the benefit of all market participants. To the extent this flexibility is utilized, the Exchange believes this should afford OTPs that utilize this risk setting the ability to better calibrate and manage risk.

Further, this proposed change, which was specifically requested by some OTPs, would remove impediments to and perfect the mechanism of a free and open market because it would be available to all OTPs (if the Exchange choses to reduce the Minimum Parameter to one percent) and may encourage more OTPs to utilize the percentage-based risk setting, specifically, or the risk settings generally, which would benefit of all market participants. The Exchange believes this proposal has the potential to help OTPs better manage their risk as it would allow for more precise customization of their risk settings which would, in turn, help OTPs avoid trading a number of contracts that exceeds the OTP's risk tolerance level.

The Exchange notes that other options exchanges offer risk settings for quotes and orders, including analogous percentage-based settings, consistent with the proposed Minimum Parameter. For example, Rule 21.16, Risk Monitor Mechanism, one [sic] both Cboe BZX Exchange, Inc. (''BZX'') and Cboe EDGX Exchange, Inc. (''EDGX'') states that each BZX or EDGX Member may (but is not required to) configure a single counting program or multiple counting programs to govern its trading activity (*i.e.,* on a per port basis).[15] Just as with Exchange's [sic] percentage-based risk setting, BZX/EDGX offer a risk setting that is based on a percentage-based trigger, measured against the number of contracts executed as a percentage of the number of contracts outstanding within a time period designated by the Exchange (''percentage trigger'').[16] This percentage trigger is calculated similarly to the risk setting on the Exchange: The BZX/EDGX counting program first calculates, for each series of an option class, the percentage of a BZX/EDGX Member's order size in the specified class or a the [sic] percentage of BZX/EDGX Member that is a market maker's quote size in the appointed class that is executed on each side of the market, including both displayed and non-displayed size; the counting program then sums the overall series percentages for the entire option class to calculate the percentage trigger. Unlike the Exchange's rule, BZX/EDGX Rule 21.16 has no minimum equivalent, which the Exchange understands means that the risk setting established by the Member for its trading activity (whether orders or market maker quotes) may be set as low as 1 percent. And unlike the Exchange, BZX/EDGX do not require its market makers to establish risk settings for quotes, nor does it impose a default setting for participants that do not establish such risk settings. As proposed, the Minimum Parameter would authorize the Exchange to allow the percentage-based trigger to be as low as 1 percent, which would thus allow the Exchange's rule to operate more similarly to the BZX/EDGX rule.[17] The Exchange believes that this proposal is consistent with the BXZ/EDGX rules that allow order senders (*i.e.,* including non-Market Makers) to use a percentage-based risk parameter that may be set as low as 1 percent.

The Exchange also notes that two non-Cboe affiliated options exchanges likewise offer similar percentage-based risk settings that apply solely to quotes. Specifically, Miami International Exchange LLC (''MIAX'') Rule 612(a) requires its market makers to establish a risk settings [sic] for quotes in its appointment (as does the Exchange). MIAX's percentage-based risk setting operates similar to the Exchange's analogous setting. However, MIAX does not provide a minimum Allowable Engagement Percentage (''AEP''); market makers are free to pick any AEP (effectively allowing them to set a threshold as low as 1 percent). If a MIAX market maker does not establish an AEP, MIAX will impose a default minimum of 100 percent. In addition, Nasdaq PHLX (''PHLX'')—like the Exchange and MIAX—also requires its market makers to utilize one of its risk settings (either volume-based or percentage-based) for quotes. PHLX's percentage-based risk setting operates similar to the Exchange's analogous setting. Further, PHLX Rule 1099(c)(2)(A) provides that market

[12] The Exchange would still announce by Trader Update the actual minimum setting for the percentage-based risk setting, which may be the same as or greater than the Minimum Parameter (but no greater than the maximum allowable percentage-based setting). *See* Commentary .03 to Rule 6.40–O.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* BZX and EDGX Rule 21.16(a)(i)–(iv) (providing optional risk settings). On each market (BZX and EDGX), risk setting limits have been reached [sic], the Risk Monitor Mechanism cancels or rejects such Member's orders or quotes in all underlying securities and cancels or rejects any additional orders or quotes. *See* BZX and EDGX Rule 21.16(b)(i)–(iii).

[16] *See* BZX and EDGX Rule 21.16(a)(iv) (setting forth percent trigger risk setting).

[17] The Exchange notes that other options in [sic] exchanges in the Cboe family offer a similar Risk Monitor Mechanism. *See, e.g.,* Cboe C2 Exchange, Inc. (''C2'') Rule 6.14(c)(5)(A)(i)–(v) (setting forth risk settings, with paragraph (iv) setting forth the percentage-based setting, each of which mirror those offered by BZX and EDGX). *See also* Securities Exchange Act Release No. 84778 (December 10, 2018) (SR–CboeEDGX–2018–058) (immediately effective EDGX filing to harmonize risk mechanism to that of its affiliated exchange, C2).

makers that opt to utilize PHLX's percentage-based risk setting may establish a minimum threshold (*i.e.,* a ''Specified Percentage'') of no lower than 1 percent.[18] The Exchange believes that this proposal is consistent with the MIAX and PHLX rules that require market makers on those exchanges to use a percentage-based risk parameter that may be set as low as 1 percent (and, in the case of MIAX, a default setting will be imposed if the market maker fails to select one).

Finally, the Exchange also believes that the proposed rule change would promote just and equitable principles of trade because Market Makers have the option to select one of three risk settings for quotes and non-Market Makers have this same option or may choose to utilize no risk settings at all. Thus, this proposal merely provides the Exchange additional latitude in establishing the percentage-based risk setting and may encourage more OTPs to utilize this or the other two risk settings, which benefits all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a Minimum Parameter that would provide the Exchange will greater flexibility in establishing the appropriate lower bound of the percentage-based setting, which may in turn provide OTPs that utilize this setting with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all OTPs, regardless of size, and would not impose a competitive burden on any participant. The proposal may foster competition among Market Makers by providing them with the ability to enhance and customize their percentage in order to compete for executions and order flow.

The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, it provides OTPs with the opportunity to avail themselves of risk settings for quotes and orders that are consistent with such tools currently available on BZX, EDGX, MIAX and PHLX.[19]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As noted above, the proposed operational functionality is substantially similar to those utilized on other options exchanges,[24] and the differences noted herein do not raise substantive or novel issues. Waiver of the operative delay would allow the Exchange to immediately implement the proposed functionality in coordination with the availability of the technology supporting the proposal, permitting OTPs to utilize the optional risk settings without undue delay. Thus the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–18. 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

[18] The Exchange notes that MIAX cited to the BZX rule when it filed an immediately effective proposed rule change to change its AEP setting from 100 percent to any percentage established by the market maker (*i.e.,* no minimum parameter). See Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR–MIAX–2016–10). See also [sic] *See* Securities Exchange Act Release No. 78129 (June 22, 2016), 81 FR 42024 (June 28, 2016)) (SR–Phlx–2016–67) (immediately effective rule filing, citing MIAX AEP, to modify its analogous percentage-based risk setting to establish the minimum Specified Percentage determined by a market maker at not less than 1 percent).

[19] *See supra* notes 15–18.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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 Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See supra* notes 14–17.

[25] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–18 and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06928 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85505; File No. SR–NASDAQ–2019–007]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Reassign Certain Investigation and Enforcement Functions Under the Exchange's Authority and Supervision

April 3, 2019.

I. Introduction

On February 5, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority (''FINRA'') under the Exchange's authority and supervision. The proposed rule change was published for comment in the **Federal Register** on February 22, 2019.[3] On February 28, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed. On March 28, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1.[4] The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.[5] At the same time, the Exchange has retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.[6]

The Exchange now proposes to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement activities, specifically: (1) Investigation and enforcement responsibilities for conduct occurring on the Nasdaq Options Market,[7] and (2) investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only (*i.e.,* not also on non-Nasdaq equities markets).[8] The Exchange states that it anticipates a phased transition whereby it would assume increasing investigation and enforcement responsibility throughout 2019 and into 2020.[9] The Exchange also anticipates transitioning certain matters currently pending with FINRA to the Nasdaq Enforcement Department if Nasdaq Regulation believes doing so is consistent with ensuring prompt resolution of regulatory matters.[10]

The Exchange states that FINRA will continue to perform certain functions, including, among other things: (1) The investigation and enforcement of conduct occurring on the Nasdaq equity market that also relates to cross market activity on non-Nasdaq exchanges; (2) the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities; [11] and (3) matters covered by agreements to allocate regulatory responsibility under Rule 17d–2 of the Act.[12]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [13] and, in particular,

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5752.

[4] In Amendment No. 2, the Exchange: (1) Revised the timing for the phased transition; (2) stated that Nasdaq Regulation will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets; (3) specified that Nasdaq BX, Inc. (''BX'') will file a similar proposed rule change to request Commission approval for Nasdaq Regulation to perform the same functions on behalf of BX; (4) provided an example of contested disciplinary proceedings that will continue to be handled by FINRA; (5) represented that the investigatory and disciplinary processes and related rules applicable to its members that FINRA currently follows on the Exchange's behalf will remain the same; and (6) made other technical, clarifying, and conforming changes. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-007/srnasdaq2019007-5252816-183726.pdf.*

[5] *See* Amendment No. 2, *supra* note 4 at 4.

[6] *See id.*

[7] The Exchange states that, as appropriate, Nasdaq Regulation will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs. *See id.* at 5 n.7.

[8] *See id.* at 5. The Exchange believes its expertise in its own market structure, coupled with its expertise in surveillance activities, would enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently, and with immediacy. *See id.* at 6. The Exchange also states that Commission approval of the proposal would allow it to better leverage its surveillance, investigation, and enforcement teams, to deliver increased efficiencies in the regulation of its market, and to act promptly and provide more effective regulation. *See id.* at 9.

[9] *See id.* at 8.

[10] *See id.*

[11] The Exchange states that, for example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent (''AWC'') letter, or if the Respondent executes the AWC letter but the Nasdaq Review Council, Review Subcommittee, or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA's Office of Hearing Officers will continue to be responsible for the administration of the hearing process. *See id.* at 7 n.12.

[12] *See id.* at 7. The Exchange represents that, as with all investigation and enforcement work, all tasks delegated to FINRA are subject to Nasdaq's supervision and ultimate responsibility. *See id.*

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with Sections 6(b)(5) and 6(b)(7) of the Act.[14] As noted above, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.[15] Nasdaq Rule 0150 requires that, unless Nasdaq obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time when Nasdaq began to operate a national securities exchange must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. The Exchange now proposes to reallocate operational responsibility for the specific investigation and enforcement activities discussed above from FINRA to Nasdaq Regulation.[16] The Commission believes that the Exchange could leverage its knowledge of its markets and members, its experience with investigation and enforcement work, and its surveillance, investigation, and enforcement staff, in helping it to effectively and efficiently conduct the reallocated investigation and enforcement activities. The Commission also notes that the proposal would be an incremental reallocation of operational responsibility because Nasdaq Regulation currently performs the same investigative and enforcement work on behalf of Nasdaq PHLX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC.[17] In addition, the Exchange states that Nasdaq Regulation has instituted the requisite infrastructure to accommodate the internalization of the investigative and enforcement work on behalf of the Exchange.[18] Moreover, the Exchange states that Nasdaq Regulation has developed comprehensive plans covering the transition and has met regularly for more than one year to ensure a smooth transition of the work and prevent any gaps in regulatory coverage.[19] Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act.

[14] 15 U.S.C. 78f(b)(5), (7).

[15] *See supra* note 5 and accompanying text.

[16] *See supra* notes 7–8 and accompanying text.

[17] *See* Amendment No. 2, *supra* note 4 at 6.

[18] *See id.* at 7. Specifically, Nasdaq has created a new investigation and enforcement group to perform the functions covered by this proposal, which included hiring additional staff. *See id.* at 8. Nasdaq would also leverage its existing staff of analysts, lawyers, programmers, and market structure experts to assist, where necessary, with performing the new functions covered by this proposal. *See id.*

[19] *See id.* The investigatory and disciplinary processes and related rules applicable to Exchange members that FINRA currently follows on the Exchange's behalf (*i.e.,* the Series 8000 and 9000 rules) will remain the same. *See id.* at 8 n.14.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–007 and should be submitted on or before April 30, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. The Commission notes that, in Amendment No. 2, the Exchange revised the timing for the phased transition, provided that BX will file a separate proposal to request Commission approval for Nasdaq Regulation to perform the same functions on behalf of BX, provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal. The Commission also notes that the original proposal was subject to a 21-day comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[20] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASDAQ–2019–007), as modified by Amendment No. 2 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06932 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(2).

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85498; File No. SR–NASDAQ–2019–004]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt a New MIDP Routing Option Under Rule 4758 and Make a Conforming Change to Rule 4703(e)

April 3, 2019.

On January 31, 2019, The Nasdaq Stock Market LLC filed with the Securities and Exchange Commission (''Commission''), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new MIDP routing option under Rule 4758 and make a conforming change to Rule 4703(e). The proposed rule change was published for comment in the **Federal Register** on February 19, 2019.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 5, 2019.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 20, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2019–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06929 Filed 4–8–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85113 (February 12, 2019), 84 FR 4885.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85503; File No. SR–NASDAQ–2019–009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Revise the Exchange's Initial Listing Standards Related to Liquidity

April 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the Exchange's initial listing standards related to liquidity.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. First, Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from the Exchange's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders (''Initial Liquidity Calculations''). To do so, Nasdaq proposes to add three new definitions to define ''restricted securities'', ''unrestricted publicly held shares'' and ''unrestricted securities'' and proposes to amend the definition of ''round lot holder''. Second, Nasdaq proposes to impose a new requirement that at least 50% of a company's round lot holders must each hold shares with a market value of at least $2,500. Third, Nasdaq proposes to adopt a new listing rule requiring a minimum average daily trading volume for securities trading over-the-counter (''OTC'') at the time of their listing. Nasdaq is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.[3] Each amendment is described in more detail below.

I. Restricted Securities

Nasdaq is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Because the current Initial Liquidity Calculations include restricted securities, a security with a substantial number of restricted securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, Nasdaq would typically first allow the company to provide and implement a plan to increase its liquidity in the near term.

trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

To address this concern, Nasdaq is proposing to adopt a new definition of ''restricted securities'' at Nasdaq Rule 5005(a)(37), which includes any securities subject to resale restrictions for any reason, including restricted securities (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; [4] (2) acquired through an employee stock benefit plan or as compensation for professional services; [5] (3) acquired in reliance on Regulation S, which cannot be resold within the United States; [6] (4) subject to a lockup agreement or a similar contractual restriction; [7] or (5) considered ''restricted securities'' under Rule 144.[8] Nasdaq is also proposing to adopt a new definition of ''unrestricted securities'' at Nasdaq Rule 5005(a)(46), which includes securities of a company that are not restricted securities. In connection with these amendments, Nasdaq is proposing to renumber the remaining provisions of Rule 5005 to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on Nasdaq are liquid and have sufficient investor interest to support an exchange listing. Nasdaq notes that in developing their index methodologies the FTSE Russell and S&P indices take a similar approach. As disclosed by FTSE Russell, ''All FTSE Russell equity index constituents are free float adjusted in accordance with the index rules, to reflect the actual availability of stock in the market for public investment.'' [9] FTSE Russell excludes shares held within employee share plans, shares subject to a ''lock-in'' clause, and shares subject to contractual restrictions.[10] S&P Dow Jones adjusts its indices to ''reflect only those shares available to investors rather than all of a company's outstanding shares.'' [11]

A. Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum number of publicly held shares in order to list its primary equity securities (including American Depositary Receipts or ''ADRs'') [12] on all tiers of the Exchange. A company is also required to have a minimum number of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; [13] subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select Market tier. Currently, Nasdaq Rule 5005(a)(35) defines ''publicly held shares'' as ''shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d–3 under the Act.'' As discussed above, the current definition of publicly held shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to publicly held shares and qualifying to list on the Exchange.

Nasdaq proposes adding a new definition of ''unrestricted publicly held shares'' at Nasdaq Rule 5005(a)(45), which would be defined as publicly held shares excluding the newly defined ''unrestricted securities.'' Nasdaq proposes to revise references to ''publicly held shares'' to ''unrestricted publicly held shares'' in the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required number of publicly held shares
5315(e)(2)	Global Select	Primary Equity Security	At least 1,250,000.
5405(a)(2)	Global	Primary Equity Security	At least 1,100,000.
5415(a)(1)	Global	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5505(a)(2)	Capital	Primary Equity Security	At least 1,000,000.
5510(a)(3)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5520(g)(3)	Capital	Subscription Receipts	At least 1,100,000.

As a result, only securities that are freely transferrable will be included in the calculation of publicly held shares to determine whether a company satisfies the Exchange's initial listing criteria under these rules. Nasdaq believes that excluding restricted securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, Nasdaq proposes revising references to ''publicly held shares'' to ''unrestricted publicly held shares'' in Rule 5310(d), which states that ''in computing the number of publicly held shares for

[4] *See, e.g.,* 17 CFR 230.144(a)(3)(i) and (ii), which states that securities issued in transactions that are not a public offering or under Regulation D are considered restricted securities.

[5] *See, e.g.,* 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

[6] *See* 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

[7] Securities issued in such transactions would typically include a ''restrictive'' legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

[8] *See* generally Securities and Exchange Commission Investor Publications, Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: *https://www.sec.gov/reportspubs/investor-publications/investorpubsrule144htm.html.*

[9] *See* FTSE Russell, ''Free-Float'', available at: *https://www.ftse.com/products/indices/free-float.*

[10] *See* FTSE Russell, ''Free Float Restrictions v2.0'', May 2018, available at: *https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf.*

[11] *See* S&P Dow Jones Indices, ''Float Adjustment Methodology'', April 2018, available at: *https://us.spindices.com/documents/index-policies/methodology-sp-float-adjustment.pdf.*

[12] Rule 5005(a)(33) defines ''Primary Equity Security'' as ''a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).''

[13] There are no separate listing requirements on the Nasdaq Global Select Market for classes of securities other than primary equity securities. Instead, pursuant to Rule 5320, if the primary equity security is listed on the Nasdaq Global Select Market, generally any other security of that same company that qualifies for listing on the Nasdaq Global Market is also included in the Nasdaq Global Select Market.

Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder [14] of the Company,'' and Rule 5226(b) which requires a paired share unit to satisfy the security-level requirements of Rule 5315 or 5405, including the number of publicly held shares. Nasdaq also proposes to revise Rule 5205(g) to reflect the change to ''unrestricted publicly held shares.'' [15] Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below.

B. Market Value of Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to market value of publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum market value of publicly held shares in order to list its primary equity securities (including ADRs) on all tiers of the Exchange. A company is also required to have a minimum market value of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select Market tier. The calculation of ''market value of publicly held shares'' does not exclude stock subject to resale restrictions. As discussed above, restricted securities may not contribute to liquidity and therefore the current calculation of market value of publicly held shares may result in a security with limited true liquidity satisfying the listing requirements related to the market value of publicly held shares and qualifying to list.

Nasdaq proposes revising its initial listing requirements so that they are based on the market value of unrestricted publicly held shares, and therefore exclude restricted securities, in the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required market value
5315(c)(1)–(3) ...	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family.	(i) a total market value of the fund family of at least $220 million; (ii) an average market value of all funds in the fund family of at least $50 million; and (iii) a market of each fund in the fund family of at least $35 million.
5315(f)(2)(A)–(D).	Global Select	Primary Equity Securities	(i) at least $110 million; (ii) at least $100 million, if the company has stockholders' equity of at least $110 million; (iii) at least $45 million in the case of an initial public offering or spin-off; or (iv) at least $70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.
IM–5315–1	Global Select	Direct Listing of Primary Equity Securities	(a) If the Company's security has had sustained recent trading in a Private Placement Market, the lesser of (i) the value calculable based on an independent third-party valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market; or (b) $250,000,000 for a security that has not had sustained recent trading in a Private Placement Market prior to listing.
5405(b)(1)(C)	Global	Primary Equity Securities	At least $8 million (Income Standard).
5405(b)(2)(C)	Global	Primary Equity Securities	At least $18 million (Equity Standard).
5405(b)(3)(B)	Global	Primary Equity Securities	At least $20 million (Market Value Standard).
5405(b)(4)(B)	Global	Primary Equity Securities	At least $20 million (Total Assets/Total Revenue Standard).
5415(a)(2)	Global	Preferred Stock or Secondary Classes of Common Stock.	At least $4 million.
5505(b)(1)(B)	Capital	Primary Equity Securities	At least $15 million (Equity Standard).
5505(b)(2)(C)	Capital	Primary Equity Securities	At least $15 million (Market Value Standard).
5505(b)(3)(C)	Capital	Primary Equity Securities	At least $5 million (Net Income Standard).
5510(a)(4)	Capital	Preferred Stock or Secondary Classes of Common Stock.	At least $3.5 million.
5520(g)(2)	Capital	Subscription Receipts	At least $100 million.

As discussed above, Nasdaq believes that excluding restricted securities from the calculation of market value of publicly held shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, market value of publicly held shares is an indication of the size and investor interest in a company. When restricted securities are included in that calculation, a company could technically meet Nasdaq's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small

[14] Rule 5005(a)(40) defines ''Shareholder'' as ''a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term ''Shareholder'' includes, for example, a limited partner, the owner of a depository receipt, or unit.''

[15] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

amount of trading activity can have an inordinate effect on market prices and a company's market value of publicly held shares.

In addition to the above, Nasdaq proposes revising references to ''market value of publicly held shares'' to ''market value of unrestricted publicly held shares'' in Rule 5226(b), which requires a paired share unit listing on Nasdaq's Global Select or Global Select Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.[16] Nasdaq also proposes to revise Rule 5205(g) to reflect that the computation for market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.[17] Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the market value of unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below.

C. Round Lot Holders

Nasdaq is proposing to revise the listing criteria related to the minimum number of round lot holders for companies seeking to initially list primary equity securities (including ADRs), preferred stock, secondary classes of common stock and warrants on the Exchange so that they are based on holders of unrestricted securities. Currently, Nasdaq defines a ''round lot holder'' as ''a holder of a Normal Unit of Trading'' and notes that ''beneficial holders will be considered in addition to holders of record.'' [18] Nasdaq defines a ''round lot or normal unit of trading'' as ''100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.'' [19] A company is required to have a minimum number of round lot holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under the existing rule, all the shares held by a holder could be restricted securities that do not contribute to liquidity.

To address this concern, Nasdaq is proposing to revise the definition of ''round lot holder'' to mean a holder of a normal unit of trading of unrestricted securities. This change will impact the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required number of round lot holders
5315(f)(1)(C)	Global Select	Primary Equity Security	At least 450 round lot holders or a minimum number of total holders.
5405(a)(3)	Global	Primary Equity Security	At least 400.
5410(d)	Global	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5415(a)(4)	Global	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5505(a)(3)	Capital	Primary Equity Securities	At least 300.
5510(a)(2)	Capital	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5515(a)(4)	Capital	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5520(g)(4)	Capital	Subscription Receipts	At least 400.

As a result of these changes, a holder of only restricted securities would not be considered in the round lot holder count. Nasdaq believes that these amendments will help ensure adequate distribution and investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

In addition to the above, Nasdaq proposes revising references to ''holder'' to ''round lot holders'' in Rule 5226(b), which requires a paired share unit applying to list on the Nasdaq Global Select or Global Market tiers to meet the security-level requirements of Rule 5315 or 5405, which includes the number of round lot holders. Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies this proposed change that determination of round lot holders be based on holders of unrestricted securities, Nasdaq will consider whether round lot holders of the underlying security hold unrestricted shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below. Nasdaq will also apply the new minimum value requirement for round lot holders to the underlying security, as proposed below, in addition to the minimum number of round lot holders required by the applicable tier that the company is seeking to list on.

D. American Depositary Receipts

Lastly, Nasdaq proposes to revise Rule 5215(b) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating publicly held shares, market value of publicly held shares, and round lot holders, Nasdaq will

[16] Nasdaq is also proposing to capitalize defined terms in Rule 5226(b) that were previously not capitalized for consistency and in order to maintain an organized rule book structure.

[17] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

[18] Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

[19] Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

continue to consider the underlying security in calculating the unrestricted publicly held shares and market value of unrestricted publicly held shares and in calculating the new definition of a round lot holder. In determining whether shares of the underlying security are ''restricted'' for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the company's home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of ''restricted securities'' would restrict the underlying security from being freely sold or tradable on its home country market, Nasdaq would also consider such restrictions when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the company and ensure adequate liquidity and distribution of the company's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.[20] Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S.

In addition, Nasdaq proposes to revise the reference to Form S–12 in Rule 5215(b) to Form F–6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.[21]

II. Minimum Value Requirement for Holders

Nasdaq is also proposing to revise the listing rules related to round lot holders listed in Part I.C, above, except for those applicable to listing warrants, to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a round lot, a shareholder may be considered a round lot holder by holding exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share.[22] Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. To address this concern, Nasdaq proposes to require that for initial listing at least 50% of a company's required round lot holders must each hold shares with a market value of at least $2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.[23] Nonetheless, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. Further, in all cases, the security underlying a warrant must be listed on Nasdaq or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.[24] Nasdaq has not observed problems with the trading of warrants.

Nasdaq believes that adopting this amendment will help ensure that a majority of the required minimum number of shareholders hold a meaningful value of stock and that a company has sufficient investor interest to support an exchange listing.

III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, secondary classes of common stock and paired share units, previously trading OTC. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). Nasdaq believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the listed securities.

Nasdaq is proposing to implement this new requirement by making identical amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5404(a)(4); Rule 5415(a) to add a new Rule 5415(a)(6); Rule 5505(a) to add a new Rule 5505(a)(5); and Rule 5510(a) to add a new Rule 5510(a)(6). In connection with the foregoing amendments, Nasdaq is proposing to revise the cross-references in Rules 5415(a) and 5510(a) to add new Rules 5415(a)(6) and 5510(a)(6), respectively, and renumber the remaining provisions of Rule 5505(a) to maintain an organized rule structure. In addition, Nasdaq is proposing to revise Rule 5226(b) to clarify that the average daily trading volume requirement would apply to companies seeking to list paired share units on the Exchange.

As noted above, the average daily trading volume requirement will also apply to ADRs. Currently, Nasdaq considers the underlying security of an ADR when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, total assets and total revenue. Nasdaq is proposing [sic] amend Rule 5215(b) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement too. Nasdaq believes that this will help demonstrate adequate investor interest in the company and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.[25]

Nasdaq is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment

[20] For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the company's home country market.

[21] Securities Exchange Act Release No. 34–19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

[22] On the Nasdaq Capital Market, certain companies are also eligible to list at $2 or $3 and the minimum value held by such a holder would be only $200 or $300, respectively. See Listing Rule 5505(a)(1)(B).

[23] Warrants issued as part of a unit must satisfy the initial listing requirements for warrants applying to list on the applicable market tier in accordance with Rule 5225.

[24] 15 U.S.C. 77r(b).

[25] ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security.

underwritten public offering of at least $4 million. Nasdaq believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For these reasons, in part, Nasdaq's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.[26] Nasdaq believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Nasdaq also notes that the same volume requirement is being proposed for each of Nasdaq's Global Select, Global and Capital Market tiers, and that it is therefore appropriate to base the exemption on the same minimum $4 million offering in each case, notwithstanding the different listing criteria generally applicable to companies seeking to list on each tier. Finally, Nasdaq believes that the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, Nasdaq notes that the minimum $4 million offering would be sufficient to satisfy Nasdaq's one million share public float requirement at the minimum $4 price for listing on Capital Market. This exemption will be included in new Rules 5315(e)(4), 5404(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

Nasdaq proposes that this change be effective 30 days after approval by the SEC. Nasdaq notes that it had originally solicited comment on a similar proposal in October 2018,[27] which provided companies with notice that Nasdaq was considering adopting the proposed changes to the Exchange's Initial Liquidity Calculations. The proposed 30-day delay from approval until operation of the proposed rule will allow companies a short opportunity to complete an offering or transaction before the new rules become effective if they have substantially completed the Nasdaq review process or are near completion of an offering or transaction, and have relied on the existing rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, as set forth below. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.[30] In particular, the Commission stated:

> Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[31]

As described below, Nasdaq believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to help ensure that issuers seeking to list on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

I. Restricted Securities

The proposed amendments will adopt new definitions of ''restricted securities'' and ''unrestricted securities'' in order to exclude securities that are subject to resale restrictions from the Exchange's Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange's quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Commission has previously noted the importance of adequate liquidity in a security and the consequences for investors when a security is thinly traded. In *In the Matter of the Application of Rocky Mountain Power Company,* the Commission observed:

> We note that the requirement concerning the number of shareholders is not only an important listing criterion but is also a standard used in conjunction with other standards to ensure that a stock has the investor following and liquid market necessary for trading. In response to the Panel's questions, the Company's president acknowledged that the market for Rocky Mountain's shares would be initially ''very, very small,'' and that fewer than 20,000 of the Company's over 700,000 shares outstanding were freely tradeable. While Rocky Mountain, as a technical matter, complied with the shareholder requirement, it failed to demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.[32]

Nasdaq believes that adopting the new definitions of restricted securities and unrestricted securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding restricted securities from the Exchange's Initial Liquidity Calculations will help ensure that Nasdaq lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors.

[26] For example, Rules 5410(d) and 5515(a)(4) provide an exemption from the minimum round lot holder requirement for warrants listed in connection with an initial firm commitment underwritten public offering. Rule 5110(c)(3) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least $40 million.

[27] *See https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR–Nasdaq–2011–073 adopting additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company).

[31] *Id.* at 70802.

[32] *See* Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 SEC. 979 (November 9, 1998).

A. Publicly Held Shares

The proposed amendments will adopt a new definition of ''unrestricted publicly held shares'' which excludes restricted securities and revise Nasdaq's initial listing standards to conform the minimum number of publicly held shares to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of ''market value'' to exclude restricted securities from the calculation of ''market value of unrestricted publicly held shares'' and revise Nasdaq's initial listing standards to conform the minimum market value to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

C. Round Lot Holders

The proposed amendments will exclude restricted securities from the calculation of the number of round lot holders required to meet the Exchange's initial listing criteria by revising the definition of ''round lot holder'' to exclude restricted securities. Nasdaq believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security.

D. American Depositary Receipts

The proposed amendments will modify Nasdaq's rules to state that when considering the security underlying an ADR, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market. However, any restrictions, including those provided as examples in the new definition of ''restricted securities,'' which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by Nasdaq when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the company and ensure adequate liquidity and distribution of the company's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, Nasdaq believes that this provision will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under Nasdaq's rules, where Nasdaq looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the company's underlying security, which is represented by the ADR.

II. Minimum Value Requirement for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's round lot holders hold securities with a market value of at least $2,500. Nasdaq believes that the proposed $2,500 minimum value is reasonable because the Exchange has noticed problems with companies listing where a large number of round lot holders hold exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under the alternative price criteria. Nasdaq notes that the proposed $2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and Nasdaq believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, Nasdaq believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

Nasdaq does not propose to impose this requirement on the initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. The value of warrants is derived from the value of the underlying security, which must be listed on Nasdaq or be a covered security and Nasdaq has not observed problems with the trading of warrants. As such, Nasdaq believes that it is not unfairly discriminatory to treat warrants differently under this proposal and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market.

III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC that apply to list on the Exchange. Nasdaq believes this proposed change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. Nasdaq believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. Further, Nasdaq believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, Nasdaq would consider trading in the security underlying an ADR in determining whether a foreign company seeking to list ADRs satisfies the requirement. Nasdaq believes that this distinction is not unfairly discriminatory because the trading volume in the underlying security represents interest in the company's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes, across all market tiers. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does [sic] not impose an unnecessary burden on competition.

To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On October 5, 2018, Nasdaq launched a formal comment solicitation on proposals to exclude restricted securities from the Exchange's Initial Liquidity Calculations and adopt a new initial listing criteria related to prior trading volume for securities that are currently trading OTC (''2018 Solicitation''), a copy of which is attached hereto as *Exhibit 2*.[33] No comments were received in response to the comment solicitation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–009, and should be submitted on or before April 30, 2019.

[33] The Commission notes that Exhibit 2 is attached to the Exchange's Form 19b–4 relating to the proposed rule change and not to this notice.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06935 Filed 4–8–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85500; File No. SR–BX–2018–025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Withdrawal of Proposed Rule Change, As Modified By Amendment No. 1, To Make Permanent the Retail Price Improvement Program Pilot, Which Is Set To Expire on June 30, 2019

April 3, 2019.

On July 9, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the pilot program for the Exchange's Retail Price Improvement program, which is set to expire on June 30, 2019. The proposed rule change was published for comment in the **Federal Register** on July 26, 2018.[3] On August 31, 2018, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to October 24, 2018.[4] On October 11, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.

On October 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 in the **Federal Register**.[6] On December 26, 2018, the Commission designated a longer period for the Commission to issue an order approving or disapproving the proposed rule change, to March 23, 2019.[7] The Commission received no comments on the proposal. On March 20, 2019, the Exchange withdrew the proposed rule change (SR–BX–2018–025).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06924 Filed 4–8–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85497; File No. SR–NYSEAMER–2019–08]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 928NY To Reduce the Minimum Allowable Parameter for the Percentage-Based Risk Limitation Mechanism

April 3, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 22, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism.

Risk Limitation Mechanisms

Rule 928NY sets forth the risk-limitation system, which is designed to help Market Makers, as well as ATP Holders, better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.[4] The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.[5] The Exchange permits, but does not require, ATP Holders to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings are breached.[6]

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[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83681 (July 20, 2018), 83 FR 35516 (July 26, 2018).

[4] *See* Securities Exchange Act Release No. 84013 (August 31, 2018), 83 FR 45479 (September 7, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 84472 (October 23, 2018), 83 FR 54401 (October 29, 2018).

[7] *See* Securities Exchange Act Release No. 84974 (December 26, 2018), 84 FR 0870 (January 31, 2019).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Market Makers are included in the definition of ATP Holders and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Markers from ATP Holders when discussing the risk limitation mechanisms. *See* Rule 900.2NY(5) (defining ATP Holder as ''a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP,'' and requires that ''[a]n ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934''). *See also* Rule 900.2NY(38) (providing that a Market Maker is ''an ATP Holder that acts as a Market Maker pursuant to Rule 920NY'').

[5] *See* Rule 928NY, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

[6] *See* Rule 928NY, Commentary .04(b) (providing that ATP Holders may avail themselves of one of

Pursuant to Rule 928NY, the Exchange establishes a time period during which the System calculates for quotes and orders, respectively: (1) The number of trades executed by the Market Maker or ATP Holder in a particular options class (''transaction-based''); (2) the volume of contracts traded by the Market Maker or ATP Holder in a particular options class (''volume-based''); or (3) the aggregate percentage of the Market Maker's quoted size or ATP Holder's order size(s) executed in a particular options class (''percentage-based'') (collectively, the ''risk settings'').[7] If a risk setting is triggered, the System will cancel all of the Market Maker's quotes or the ATP Holder's open orders in that class until the Market Maker or ATP Holder notifies the Exchange it will resume submitting quotes or orders.[8] The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or ATP Holders to re-evaluate their positions before requesting to re-enter the market.

Proposed Change to Minimum Parameter for Percentage-Based Risk Setting

Per Commentary .03 to Rule 928NY, the Exchange establishes outside allowable parameters for each risk setting and announces by Trader Update ''any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms'' that are at or within these outside parameters. ATP Holders, in turn, adjust their own risk settings within the Exchange-established parameters, based on risk tolerance, taking into account such factors as present and anticipated market conditions, news in an option, and/or sudden change in volatility of an option. Put another way, the rule sets forth the minimum/maximum for each risk setting and the Exchange may, but does not have to, use these settings. However, the Exchange may instead choose settings that are higher than the minimum and lower than the maximum settings (*i.e.,* if the rule allows a minimum of 1 and a maximum of 10, the Exchange could use these parameters or could instead establish a minimum of 3 and a maximum of 7). Once the Exchange determines and announces the applicable parameters for each risk setting, the ATP Holder, in turn, selects a setting within the Exchange announced parameters that suits their risk tolerance (*i.e.,* assuming the Exchange selected a minimum of 3 and a maximum of 7, the ATP Holder may select a setting of 3, 4, 5, 6 or 7).

The Exchange proposes to adjust the minimum allowable parameter as established by Rule for the percentage-based risk setting from 100 percent to 1 percent (the ''Minimum Parameter'').[9] The following illustrates the potential impact of the Exchange setting the reducing the minimum threshold from 100 percent to 1 percent:

If a market participant has interest in two series of the same underlying, A and B, for 10 contracts each, the participant uses the percentage-based risk setting, and the exposure risk is set to 100 percent, an execution in series A for 10 contracts will result in the interest in series B being canceled. However, if the execution in series A is for 9 contracts (as opposed to 10), the interest in series B would not be cancelled. If there is a subsequent execution within the time period [10] in series B for any number of contracts or for the remaining contract in series A, the remaining interest in series A and B will be canceled.

If the same facts as above, but instead, the participant's exposure risk is set to 1 percent (as opposed to 100 percent), an execution in series A for any number of contracts, will result in the remaining interest in series A and B being canceled.

As indicated above, the proposed reduction of the Minimum Parameter was specifically requested by some ATP Holders and would inure to their benefit as it would allow the Exchange to offer more sensitive risk controls. The Exchange notes that it is not modifying the maximum threshold for the percentage-based setting, which provides ATP Holders, and Market Makers in particular, the ability to more finely calibrate their risk exposure. The Exchange has not modified this Minimum Parameter since implementing the risk settings in 2012.[11] The Exchange believes a modification to the Minimum Parameter would account for increased market volatility and fragmentation, as well as the ever-increasing automation, speed and volume transacted in today's electronic trading environment. In this regard, this proposed change would provide the Exchange with more flexibility within which to establish the lower bound risk parameter for ATP Holders that use this risk setting. To the extent this flexibility is utilized, the Exchange believes this should afford such ATP Holders the ability to better calibrate and manage risk.[12]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

ATP Holders are vulnerable to the risk from a system or other error or a market event that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their exposure in the market. Without adequate risk management tools, such as the available risk settings, ATP Holders may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. The Exchange

the three risk limitation mechanisms for certain of their orders) and Commentary .01 (regarding the cancellation of orders once the risk settings have been breached).

[7] *See* Rule 928NY(b)–(d) (setting forth the three risk limitation mechanisms available). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. *See also* Commentary .08 to Rule 928NY.

[8] *See* Commentaries .01 and .02 to Rule 928NY (requiring that a Market Maker or ATP Holder request that it be re-enabled after a breach of its risk settings).

[9] *See* proposed Commentary .03 to Rule 928NY. The manner in which Rule 928NY operates is not being amended in this rule change.

[10] *See* Commentary .03 to Rule 928NY (providing that the Exchange will specify via Trader Update ''any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds'').

[11] *See* Securities Exchange Act Release No. 67713 (August 22, 2012), 77 FR 52090 (August 28, 2012) (SR–NYSEMKT–2012–39). In 2016, the Exchange modified only the upper bound of the percentage-based (as well as the upper bound of the volume-based) risk setting. At that time, the Exchange also modified both the upper and lower bound of the transaction-based setting. *See* Securities Exchange Act Release No. 79468 (December 5, 2016), 81 FR 89160 (December 9, 2016) (SR–NYSEMKT–2016–110).

[12] The Exchange would still announce by Trader Update the actual minimum setting for the percentage-based risk setting, which may be the same as or greater than the Minimum Parameter (but no greater than the maximum allowable percentage-based setting). *See* Commentary .03 to Rule 928NY.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

believes that the proposed Minimum Parameter, which setting has not been modified since it was adopted in 2012, removes impediments to and perfects the mechanism of a free and open market by providing the Exchange with more flexibility within which to establish the appropriate lower bound of the percentage-based setting, in consideration of market conditions, which would enable this risk setting to operate in the manner intended to the benefit of all market participants. To the extent this flexibility is utilized, the Exchange believes this should afford ATP Holders that utilize this risk setting the ability to better calibrate and manage risk.

Further, this proposed change, which was specifically requested by some ATP Holders, would remove impediments to and perfect the mechanism of a free and open market because it would be available to all ATP Holders (if the Exchange choses to reduce the Minimum Parameter to one percent) and may encourage more ATP Holders to utilize the percentage-based risk setting, specifically, or the risk settings generally, which would benefit of all market participants. The Exchange believes this proposal has the potential to help ATP Holders better manage their risk as it would allow for more precise customization of their risk settings which would, in turn, help ATP Holders avoid trading a number of contracts that exceeds the ATP Holder's risk tolerance level.

The Exchange notes that other options exchanges offer risk settings for quotes and orders, including analogous percentage-based settings, consistent with the proposed Minimum Parameter. For example, Rule 21.16, Risk Monitor Mechanism, on both Cboe BZX Exchange, Inc. (''BZX'') and Cboe EDGX Exchange, Inc. (''EDGX'') states that each BZX or EDGX Member may (but is not required to) configure a single counting program or multiple counting programs to govern its trading activity (*i.e.,* on a per port basis).[15] Just as with Exchange's [sic] percentage-based risk setting, BZX/EDGX offer a risk setting that is based on a percentage-based trigger, measured against the number of contracts executed as a percentage of the number of contracts outstanding within a time period designated by the Exchange (''percentage trigger'').[16] This percentage trigger is calculated similarly to the risk setting on the Exchange: The BZX/EDGX counting program first calculates, for each series of an option class, the percentage of a BZX/EDGX Member's order size in the specified class or a the [sic] percentage of BZX/EDGX Member that is a market maker's quote size in the appointed class that is executed on each side of the market, including both displayed and non-displayed size; the counting program then sums the overall series percentages for the entire option class to calculate the percentage trigger. Unlike the Exchange's rule, BZX/EDGX Rule 21.16 has no minimum equivalent, which the Exchange understands means that the risk setting established by the Member for its trading activity (whether orders or market maker quotes) may be set as low as 1 percent. And unlike the Exchange, BZX/EDGX do not require its market makers to establish risk settings for quotes, nor does it impose a default setting for participants that do not establish such risk settings. As proposed, the Minimum Parameter would authorize the Exchange to allow the percentage-based trigger to be as low as 1 percent, which would thus allow the Exchange's rule to operate more similarly to the BZX/EDGX rule.[17] The Exchange believes that this proposal is consistent with the BXZ/EDGX rules that allow order senders (*i.e.,* including non-Market Makers) to use a percentage-based risk parameter that may be set as low as 1 percent.

The Exchange also notes that two non-Cboe affiliated options exchanges likewise offer similar percentage-based risk settings that apply solely to quotes. Specifically, Miami International Exchange LLC (''MIAX'') Rule 612(a) requires its market makers to establish a risk settings [sic] for quotes in its appointment (as does the Exchange). MIAX's percentage-based risk setting operates similar to the Exchange's analogous setting. However, MIAX does not provide a minimum Allowable Engagement Percentage (''AEP''); market makers are free to pick any AEP (effectively allowing them to set a threshold as low as 1 percent). If a MIAX market maker does not establish an AEP, MIAX will impose a default minimum of 100 percent. In addition, Nasdaq PHLX (''PHLX'')—like the Exchange and MIAX—also requires its market makers to utilize one of its risk settings (either volume-based or percentage-based) for quotes. PHLX's percentage-based risk setting operates similar to the Exchange's analogous setting. Further, PHLX Rule 1099(c)(2)(A) provides that market makers that opt to utilize PHLX's percentage-based risk setting may establish a minimum threshold (*i.e.,* a ''Specified Percentage'') of no lower than 1 percent.[18] The Exchange believes that this proposal is consistent with the MIAX and PHLX rules that require market makers on those exchanges to use a percentage-based risk parameter that may be set as low as 1 percent (and, in the case of MIAX, a default setting will be imposed if the market maker fails to select one).

Finally, the Exchange also believes that the proposed rule change would promote just and equitable principles of trade because Market Makers have the option to select one of three risk settings for quotes and non-Market Makers have this same option or may choose to utilize no risk settings at all. Thus, this proposal merely provides the Exchange additional latitude in establishing the percentage-based risk setting and may encourage more ATP Holders to utilize this or the other two risk settings, which benefits all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a Minimum Parameter that would provide the Exchange will greater flexibility in establishing the appropriate lower bound of the percentage-based setting, which may in turn provide ATP Holders that utilize this setting with greater control and flexibility over setting their

[15] *See* BZX and EDGX Rule 21.16(a)(i)–(iv) (providing optional risk settings). On each market (BZX and EDGX), risk setting limits have been reached [sic], the Risk Monitor Mechanism cancels or rejects such Member's orders or quotes in all underlying securities and cancels or rejects any additional orders or quotes. *See* BZX and EDGX Rule 21.16(b)(i)–(iii).

[16] *See* BZX and EDGX Rule 21.16(a)(iv) (setting forth percent trigger risk setting).

[17] The Exchange notes that other options in [sic] exchanges in the Cboe family offer a similar Risk Monitor Mechanism. *See, e.g.,* Cboe C2 Exchange, Inc. (''C2'') Rule 6.14(c)(5)(A)(i)–(v) (setting forth risk settings, with paragraph (iv) setting forth the percentage-based setting, each of which mirror those offered by BZX and EDGX). *See also* Securities Exchange Act Release No. 84778 (December 10, 2018) (SR–CboeEDGX–2018–058) (immediately effective EDGX filing to harmonize risk mechanism to that of its affiliated exchange, C2).

[18] The Exchange notes that MIAX cited to the BZX rule when it filed an immediately effective proposed rule change to change its AEP setting from 100 percent to any percentage established by the market maker (*i.e.,* no minimum parameter). See Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR–MIAX–2016–10). See also [sic] *See* Securities Exchange Act Release No. 78129 (June 22, 2016), 81 FR 42024 (June 28, 2016)) (SR–Phlx–2016–67) (immediately effective rule filing, citing MIAX AEP, to modify its analogous percentage-based risk setting to establish the minimum Specified Percentage determined by a market maker at not less than 1 percent).

risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all ATP Holders, regardless of size, and would not impose a competitive burden on any participant. The proposal may foster competition among Market Makers by providing them with the ability to enhance and customize their percentage in order to compete for executions and order flow.

The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, it provides ATP Holders with the opportunity to avail themselves of risk settings for quotes and orders that are consistent with such tools currently available on BZX, EDGX, MIAX and PHLX.[19]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As noted above, the proposed operational functionality is substantially similar to those utilized on other options exchanges,[24] and the differences noted herein do not raise substantive or novel issues. Waiver of the operative delay would allow the Exchange to immediately implement the proposed functionality in coordination with the availability of the technology supporting the proposal, permitting ATP Holders to utilize the optional risk settings without undue delay. Thus the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–08 and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

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[19] *See supra* notes 15–18.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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 Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See supra* notes 14–17.

[25] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85504; File No. SR–NASDAQ–2019–024]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Equity 7 Pricing Schedule, Section 139

April 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Equity 7 Pricing Schedule, Section 139, to introduce, for no additional fee, an enterprise license for the distribution of Nasdaq Last Sale (''NLS'') data for personal use. The Exchange expects the proposed license to lower the cost of distributing last sale data and expand its availability to the general investing public by: (i) Eliminating certain counting requirements for NLS usage, and (ii) expanding the available mechanisms for the delivery of NLS data. The proposed enterprise license will not increase any fee because it will replace the current maximum fee of $41,500 for distribution of NLS data with a monthly enterprise license for the same amount.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce, for no additional fee, an enterprise license for the distribution of NLS data for personal use. The Exchange expects the proposed license to lower the cost of distributing last sale data and expand its availability to the general investing public by: (i) Eliminating certain counting requirements for NLS usage, and (ii) expanding the available mechanisms for the delivery of NLS data. The proposed enterprise license will not increase any fee because it will replace the current maximum fee of $41,500 for distribution of NLS data with a monthly enterprise license for the same amount.[3]

Nasdaq Last Sale

NLS provides real-time last sale information for executions occurring within the Nasdaq Market Center and trades reported to the jointly-operated FINRA/Nasdaq Trade Reporting Facility (''TRF'').[4] The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (''NLS for Nasdaq'') and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (''NLS for NYSE/NYSE American'').[5] NLS is a ''non-core'' product that provides a subset of the ''core'' last sale data provided by securities information processors (''SIPs'') under the CTA Plan and the Nasdaq UTP Plan.[6]

NLS was designed to enable market-data distributors ''to provide free access to [ ] data to millions of individual investors via the internet and television'' and was expected to ''increase[ ] the availability of N[asdaq] proprietary market data to individual investors.'' [7] As Nasdaq explained when proposing to change NLS from a pilot to a permanent program, ''the program has vastly increased the availability of N[asdaq] proprietary market data to individual investors. Based upon data from NLS Distributors, N[asdaq] believes that since its launch in July 2008, the NLS data has been viewed by millions of investors on websites operated by Google, Interactive Data, and Dow Jones, among others.'' [8]

NLS is offered through two fee schedules: One for the general investing public, and another for specialized usage.[9] Distribution to the general investing public is available under three stair-stepped [10] fee models: Per User,[11] Per Query,[12] and Per Device.[13]

The Per User model measures usage through a username/password entitlement system. To adopt the Per User model, a Distributor [14] must distribute NLS solely to Users [15] for Display Usage; [16] all such Users must be either Non-Professionals [17] or Professionals [18] whom the Distributor has no reason to believe are using NLS in their professional capacity, and the Distributor must restrict and track access to NLS using a username/password logon or comparable method of regulating access approved by Nasdaq. While many of the Recipients [19] of data under such a model would be Non-Professionals, the model does not require a Distributor to limit distribution to Non-Professionals. Occasional, incidental use by a

[3] The Exchange initially filed the proposed rule change on March 14, 2019 (SR–NASDAQ–2019–018). On March 28, 2019, the Exchange withdrew that filing and submitted this filing.

[4] *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (proposing NLS); *see also* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (approving SR–NASDAQ–2006–060, as amended by Amendment Nos. 1 and 2, to implement NLS on a pilot basis).

[5] *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060).

[6] *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

[7] *See* SR–NASDAQ–2006–060 (Amendment No. 2, June 10, 2008), at 3, available at *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2006/SR-NASDAQ-2006-060_Amendment_2.pdf.*

[8] *See* Securities Exchange Act Release No. 71351 (January 17, 2014), 79 FR 4200 (January 24, 2014) (SR–NASDAQ–2014–006).

[9] *See* Equity 7, Section 139(b) (General Investing Public) and 139(c) (Specialized Usage).

[10] Pricing is ''stair-stepped'' in that the tiered fees are effective for the incremental Users in the new tier. *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060).

[11] *See* Equity 7, Section 139(b)(1).

[12] *See* Equity 7, Section 139(b)(2).

[13] *See* Equity 7, Section 139(b)(3).

[14] A ''Distributor'' is ''an entity, as identified in the Nasdaq Global Data Agreement (or any successor agreement), that executes such an Agreement and has access to Exchange Information, together with its affiliates having such access.'' *See* Equity 7, Section 139(f)(3).

[15] A ''User'' is ''a natural person who has access to Exchange Information.'' *See* Equity 7, Section 139(f)(10).

[16] ''Display Usage'' refers to ''any method of accessing Exchange Information that involves the display of such data on a screen or other mechanism designed for access or use by a natural person or persons.'' *See* Equity 7, Section 139(f)(2).

[17] ''Non-Professional'' means ''a natural person who is not: (A) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an 'investment adviser' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' *See* Equity 7, Section 139(f)(6).

[18] ''Professional'' means ''any natural person, proprietorship, corporation, partnership, or other entity whatever other than a Non-Professional.'' *See* Equity 7, Section 139(f)(7).

[19] ''Recipient'' means ''any natural person, proprietorship, corporation, partnership, or other entity whatever that has access to Exchange Information.'' *See* Equity 7, Section 139(f)(8).

Professional in connection with professional activities would not affect the Distributor's eligibility for the Per User fee, as long as the Distributor, in establishing the connection to the Professional User, did not have reason to believe that professional usage would occur.[20]

The Per Query model determines usage based on the number of queries received. This model is available for Distributors that disseminate NLS solely to Users for Display Usage and track queries using a method approved by Nasdaq. In contrast to a Per User model, which makes all data available in a streaming or a montage format, the Per Query model supplies only as much data as the User requests on an ad hoc basis. Because a Per Query model is likely to be of less use to Professionals acting in a professional capacity, the model does not place limitations on the persons to whom it is offered (as long as they are natural persons viewing the data through Display Usage). The model also does not require the Distributor to limit access through any sort of entitlement system. As such, Per Query data may be made available through a publicly accessible website.

The Per Device model tracks usage according to the number of Devices[21] that access NLS. The Per Device model is available to Distributors that distribute NLS for Display Usage in a manner that does not restrict access and which track the number of unique Devices that access NLS during each month using a tracking method approved by Nasdaq.

The current fee schedule sets a maximum fee for any Distributor using the Per User, Per Query, or Per Device models (or any combination thereof) of $41,500 per month.[22]

A Distributor that is not able to use any of the distribution models for the general investing public but nevertheless wishes to distribute NLS will be required to pay fees applicable to a model for ''specialized usage.''[23]

Proposed Enterprise License

The Exchange proposes to replace the current maximum fee of $41,500 per month for a Distributor using the Per User, Per Query, or Per Device models for distribution to the General Investing Public with a monthly enterprise license for the same amount for any customer that would otherwise be eligible for the such fees, excluding any requirement to count or track usage. The proposal will not change any fee because any Distributor currently paying the maximum fee of $41,500 would continue to pay the same fee for the same data, albeit using an enterprise license that is easier to administer and allows for more methods of distribution.[24] To be eligible for the enterprise license, NLS must be distributed on platform(s) controlled by the Distributor[25] and pre-approved by the Exchange as providing the Distributor with a reasonable basis to conclude that all Users of such Information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using NLS in their professional capacity.

The Exchange expects the proposal to lower administrative costs for Distributors of NLS to the general investing public by replacing the counting of users, queries or devices with a ''systems'' approach in which the Distributor would set forth—and Nasdaq would review and approve—a system of distribution that provides the Distributor and the Exchange with a reasonable basis to conclude that all Users of such Information[26] are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using NLS in their professional capacity. Distributors would not be required to track access to NLS using a username/password logon for the Per User model, queries as required by the Per Query model, or the number of unique Devices that access NLS as required by the Per Device model.

The Exchange would evaluate each system using the same approach used today to evaluate distribution through the Per User model, which currently requires that Distributors disseminate data to Users who are ''either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity.''[27] A Distributor has ''no reason to believe'' that NLS is being used in a professional capacity when, for example, the data is made available to the general investing public in a format that would be ''unlikely to be of significant use to Professionals acting in a professional capacity,'' as in the Per Query model,[28] or when the Information is ''made freely available to internet users,'' as in the Per Device model.[29] Any Distributor currently eligible to disseminate NLS under the Per User, Per Query, or Per Device models will be able to demonstrate that it is disseminating Information to Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity because that test is already inherent (or explicit) within the eligibility criteria for each model.[30]

The proposed license will allow Distributors to disseminate NLS data to the general investing public in a manner that is not readily tracked using the Per User, Per Query, or Per Device models. An example of the type of distribution model intended to benefit from the proposed license is a spreadsheet program that allows the User to refresh

[20] *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010) (discussing application of the Per User model).

[21] ''Device'' has the same meaning as ''Subscriber,'' which is ''a device, computer terminal, automated service, or unique user identification and password combination that is not shared and prohibits simultaneous access, and which is capable of accessing Exchange Information; 'Interrogation Device,' 'Device' or 'Access' have the same meaning as Subscriber. For any device, computer terminal, automated service, or unique user identification and password combination that is shared or allows simultaneous access, Subscriber shall mean the number of such simultaneous accesses.'' *See* Equity 7, Section 139(f)(9).

[22] A Distributor that wishes to distribute Nasdaq Last Sale via television must pay the maximum fee and may then distribute Nasdaq Last Sale either solely via television or in combination with unlimited use of the Per User, Per Query, and/or Per Device model. *See* Equity 7, Section 139(b)(4).

[23] *See* Equity 7, Section 139(c).

[24] Distributors that do not elect to purchase the enterprise license, but inadvertently exceed $41,500 in Per User, Per Query or Per Device fees, may purchase the enterprise license for the month(s) in which fees exceeded $41,500 without pre-approval.

[25] Any Distributor able to meet the criteria set forth under the Per User, Per Query or Per Device models will be able to demonstrate control over the platform because the applicable tracking requirements and other limitations necessarily require such control.

[26] ''Information'' is defined as ''any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.'' *See* Equity 7, Section 139(f)(5).

[27] *See* Section 139(b)(1).

[28] *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

[29] *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

[30] The ''no reason to believe'' test is explicitly part of the criteria for the Per User model. *See* Section 139(b)(1). It is inherent in the Per Query model because, as noted above and in the filing instituting that fee, this model ''is unlikely to be of significant use to Professionals acting in a professional capacity . . .'' *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010). It is also inherent in the Per Device model because that model is designed to make information ''freely available to internet users,'' and therefore is unlikely to be of significant use to Professionals acting in a professional capacity. *See Id.*

a stock price using an in-program command without copying data. Such usage is analogous to the Per Query model, which supplies only as much data as the User requests on an ad hoc basis, but is less susceptible to counting because the request is done using a command embedded within another program.

Since the launch of NLS in July 2008, the Exchange has strived to make last sale data available to individual investors using the latest available technology, such as television and the internet. The proposed enterprise license continues in that tradition, making NLS data available to the general investing public using mechanisms in which the traditional methods of counting usage—Per Query, Per User and Per Device—are unavailable or impractical, while at the same time lowering administrative costs for distributors by eliminating the need to count users, queries and devices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[32] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The fees established under Equity 7, Section 139, reflect Nasdaq's expectation, in creating NLS, that it would be used by market data Distributors to allow widespread dissemination of last sale information to individual investors by various means, including websites and television. The statutory basis for Nasdaq's current fees for NLS has already been described in prior filings,[33] and Nasdaq is not modifying these long-established fees except to add an enterprise license, for no additional fee, that would lower the cost of distributing last sale data and expand its availability to the general investing public by: (i) Eliminating certain counting requirements for distributors and (ii) expanding the available mechanisms for the delivery of last sale data to the public. The proposed change is an equitable allocation of reasonable dues, fees and other charges because it expands the availability of last sale data while also lowering the cost of distribution for an already established fee. The proposed enterprise license is furthermore consistent with an equitable allocation of reasonable dues, fees and other charges because it alleviates the administrative costs and burdens associated with tracking usage of the product by allowing the Distributor to purchase a license without counting actual usage. The change is reasonable and not unfairly discriminatory because it will allow for the distribution of NLS data to all Distributors and Users that currently have access to such data using a wider variety of delivery formats such as, for example, distributing NLS data through a spreadsheet program that includes a command for in-program updates of NLS data.

The Act does not prohibit all distinctions among customers, but rather discrimination that is unfair. As the Commission has recognized, ''[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [34] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [35]

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[36]

The Commission was speaking to the question of whether broker-dealers should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of* the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

Products such as NLS provide additional choices to broker-dealers and other data consumers, in that they provide *less than* the quantum of data provided through the consolidated tape feeds but at a lower price. Thus, they provide broker-dealers and others with an option to use a lesser amount of data in circumstances where SEC Rule 603(c) does not require a broker-dealer to provide a consolidated display.[37] They are all, however, voluntary products for which market participants can readily substitute the consolidated data feeds. Accordingly, Nasdaq is constrained from pricing the product in a manner that would be inequitable or unfairly discriminatory. Moreover, the fees for these products, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow.[38]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4) and (5).

[33] *See, e.g.,* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

[34] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[35] *Id.*

[36] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[37] 17 CFR 242.603(c).

[38] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)). (''No one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .).

available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed change lowers the administrative costs for Distributors disseminating NLS data to the general investing public while expanding the types of delivery mechanisms available for such data. The proposal will advance competition by promoting widespread distribution of data to investors without increasing any current fee.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. This rule proposal does not burden competition, since other SROs and data vendors continue to offer alternative data products and, like the Exchange, set fees, but rather reflects the competition between data feed vendors and will further enhance such competition.

NLS is part of the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[39]

In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because, if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating, and maintaining a trade reporting system—costs that must be covered through the fees charged for use of the facility and sales of associated data. As such, Nasdaq's overall fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

As a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing more orders will become correspondingly more valuable.

Products such as NLS can enhance order flow to Nasdaq by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

Similarly, in the case of products such as NLS that may be distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue.[40] Retail broker-dealers offer their retail customers proprietary data only if it promotes trading and generates

[39] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' Antitrust Law Journal, Vol. 70, No. 3 (2003).

[40] Indeed, the proposed enterprise license itself provides evidence of such competition as it was designed, in part, to lower vendor costs.

sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.[41]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–024 and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06931 Filed 4–8–19; 8:45 am]

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[41] Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, internalizing broker-dealers and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for broker-dealers to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, broker-dealers, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE American, NYSE Arca, IEX, and CBOE.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority No. 465]

Delegation of Functions and Authorities To Provide a Waiver of Certain United States Passport Application and File Search Fees

By virtue of the authority vested in the Secretary of State, including by Section 1 of the Department of State Basic Authorities Act, as amended (22 U.S.C. 2651a), and by the Presidential Memorandum on the Delegation of Functions and Authorities Under Section 1238 of the FAA Reauthorization Act of 2018, dated December 21, 2018, I hereby delegate to the Assistant Secretary of State for Consular Affairs the following functions and authorities of the President set forth in sections 1238(a)(1)(A)–(B) of the FAA

Reauthorization Act of 2018 (42 U.S.C. 5174b(1)(A)–(B)):

(1) The authority under 42 U.S.C. 5174b(1)(A)) to provide a waiver of the United States passport application fee for individuals who lost their United States passport in a qualifying major disaster; and

(2) The authority under 42 U.S.C. 5174b(1)(B)) to provide a waiver of the file search fee for a United States passport for individuals who lost their United States passport in a qualifying major disaster.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time. Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, and the Under Secretary or Deputy Under Secretary for Management may at any time exercise any authority or function delegated herein.

This delegation of authority does not supersede or amend any other delegation of authority currently in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: February 28, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–06992 Filed 4–8–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Delegation of Authority No. 346–1]

Delegation by the Secretary of State to the Assistant Secretary for East Asian and Pacific Affairs of the Authority To Waive the Visa Ban Under Section 5(a) of Public Law 110–286

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), Section 5(a) of the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008 (Pub. L. 110–286); and the Presidential Memorandum of August 29, 2012, I hereby delegate to the Assistant Secretary for East Asian and Pacific Affairs, to the extent authorized by law, the authority under Section 5(a)(2) of the JADE Act to waive the visa bans imposed pursuant to Section 5(a)(1) of Public Law 110–286.

Any act, executive order, regulation, or procedure subject to or affected by this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Under Secretary for Political Affairs may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority supersedes Delegation of Authority 346, dated October 1, 2012, and will be published in the **Federal Register**.

Dated: March 5, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–06993 Filed 4–8–19; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 88]

Railroad Safety Advisory Committee

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of meeting.

SUMMARY: FRA announces the fifty-eighth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process.

DATES: The RSAC meeting is scheduled for Wednesday and Thursday, April 24 and 25, 2019. On both days, the meeting will commence at 9:30 a.m. and will adjourn by 3:30 p.m.

ADDRESSES: The RSAC meeting will be held at the National Association of Home Builders, National Housing Center, located at 1201 15th Street NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, (202) 493–6286; or Larry Woolverton, Executive Officer, FRA Office of Railroad Safety, (202) 493–6212.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC is composed of 40 voting representatives from 29 member organizations representing various rail industry perspectives. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. Please see the RSAC website for additional information at *http://rsac.fra.dot.gov/*.

Public Participation: The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. The U.S. Department of Transportation and the Federal Railroad Administration are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below and submit your request at least five business days in advance of the meeting.

Persons who wish to submit written comments for consideration by RSAC during the meeting must submit them no later than April 19, to ensure transmission to RSAC members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be reviewed prior to the meeting.

Agenda Summary: The RSAC meeting will include opening remarks from the FRA Administrator, as well as an update on the railroad industry's implementation of positive train control. FRA will present reports from the Passenger Safety Working Group and the Tourist and Historic Railroads Working Group. The Committee will also discuss proposed procedures for conducting future RSAC activities. This agenda is subject to change.

Issued in Washington, DC.

John Karl Alexy,

Deputy Associate Administrator, Office of Railroad Safety.

[FR Doc. 2019–07072 Filed 4–5–19; 4:15 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2018–0010]

National Transit Database Reporting Changes and Clarifications

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice provides information on proposed changes and clarifications to the National Transit Database (NTD) reporting requirements. All proposed changes and clarifications will be effective for report year 2019 (beginning September 2019).

DATES: Comments are due by June 10, 2019. FTA will consider late comments to the extent practicable.

ADDRESSES: Please identify your submission by Docket Number (FTA–

2018–0010) through one of the following methods:

- *Federal eRulemaking Portal:* Submit electronic comments and other data to *http://www.regulations.gov.*
- *U.S. Mail:* Send comments to Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Management Facility, in Room W12–140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Management Facility, U.S. Department of Transportation, at (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2018–0010) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments. You may review U.S. DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8 or *http://DocketsInfo.dot.gov.*

Electronic Access and Filing: This document and all comments received may be viewed online through the Federal rulemaking portal at *http://www.regulations.gov or at the street address listed above.* Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at *https://www.federalregister.gov.*

FOR FURTHER INFORMATION CONTACT: Maggie Schilling, National Transit Database Program Manager, FTA Office of Budget and Policy, (202) 366–2054 or *maggie.schilling@dot.gov.*

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D. Changes to the A–20—Adjust the Reporting Categories for Special Track Work
E. Changes to the D–10—New Reporting on the Use of Automatic Passenger Counters
F. Changes to the FFA–10—New Reporting on Vehicle Revenue Miles by State for Urbanized Area Reporters
G. Changes to Safety Event Reporting
  a. Clarification of Reportable Suicide Attempts
  b. Modify Data Collection on Vehicles Involved in Reportable Safety Events
  c. Add information on Drug and Alcohol Post-Accident Testing
H. Clarification on Reporting Service Information on a Temporary Bus Bridge
I. Clarification of Incidental Use for Transit Asset Reporting
J. Allow Separate Mode Reporting for Geographically and Resource Separated Modes
K. Clarification on Commuter Service Survey Standards
L. Clarification on Reporting Linear Miles and Track Miles to the Asset Inventory
M. Clarification of Rural Financial Data Reporting Requirement.

A. Background and Overview

The National Transit Database (NTD) was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients and beneficiaries of Federal Transit Administration (FTA) grants under either the Urbanized Area Formula Program (49 U.S.C. 5307) or Rural Area Formula Program (49 U.S.C. 5311) are required by law to report to the NTD.

Based on feedback from NTD stakeholders and the transit industry, FTA is proposing to make a number of reporting changes and clarifications to NTD reporting requirements. FTA seeks comment on the proposed changes and clarifications described below. Anticipated industry burden estimates and proposed implementation timelines are included in the discussion of each item.

B. Additional Types of Service

The NTD currently collects financial and service information by mode (*e.g.,* heavy rail, light rail, motorbus, commuter bus, etc.) and type of service (purchased transportation and directly operated transportation). Reporters must report separate service and financial information for each mode and type of service they operate. There are two types of service reported to the NTD: Directly operated (DO) and purchased transportation (PT). FTA is proposing the addition of two new types of service described below: Taxi (TX) and transportation network company (TN).

FTA proposes implementing these new types of service for the 2019 report year.

a. New Type of Service for Reportable Taxi Service

49 U.S.C. 5302 states that *public transportation* must be ''regular, continuing shared-ride surface transportation services that are open to the general public . . .''. FTA uses this definition to consider whether service is eligible to be reported to the NTD for inclusion in the data sets used by FTA to apportion formula grants.

Under this definition, taxi service is not considered public transportation; however, some agencies may contract with a taxi company to provide overflow capacity for their demand response service. In these arrangements, the request for the ride is dispatched through the agency's demand response service and the taxi company simply provides the vehicle for the demand response ride(s). These trips are reported to the NTD using the Demand Response Taxi (DT) mode.

FTA is proposing to eliminate the Demand Response Taxi (DT) mode and replace it with a type of service designation. Agencies would report current Demand Response Taxi (DT) rides as Demand Response (DR) rides with the type of service designation of Taxi (TX) defined as follows: The Taxi type of service is demand response transportation service provided by a private taxi company on behalf of a public transportation agency using a non-dedicated fleet. Services are directly dispatched by the agency and provided using the taxi company's drivers and vehicles.

Although this represents a change to the way the data would be captured in the system, it does not impact the reporting burden. Data that is reported to the NTD as ''Demand Response Taxi—Purchased Transportation'' would simply be relabeled as ''Demand Response—Taxi,'' with no change to the reporting requirements. FTA believes that this change will more precisely reflect that trips provided by this service are still demand response trips coordinated through a transit agency's dispatch system, but delivered by a taxi company.

b. New Type of Service for Demand Responsive Service Provided by Transportation Network Companies

A growing number of transit agencies are establishing formal arrangements with transportation network companies (TNCs) to support first mile/last mile and/or demand responsive services to their riders. Reporters have asked for clarification on how to report these services to meet their NTD reporting obligations and to include data from

these services in the annual apportionment of formula funds. In addition, industry stakeholders have expressed a desire to use NTD data to identify these types of arrangements. In response to these needs, FTA is proposing the addition of a new type of service that would identify eligible public transportation provided by TNCs.

In assessing the best way to collect this information for both reporters and stakeholders, FTA considered two options: (1) The creation of a new mode of service, or (2) the creation of a new type of service for public transportation provided by TNCs. The burden for reporters would be identical in both cases. The creation of a new mode or type of service would require agencies reporting on public transportation provided by TNCs to separate the financial and operating information for these services from their other modes or types of service for NTD reporting.

While both approaches would allow agencies to report their services separately and provide transparency to stakeholders, FTA proposes to distinguish these services by type of service rather than mode because of the reporting flexibility provided by this option. While many of the current service agreements between transit agencies and TNCs are similar in nature to the Demand Response or Demand Response Taxi modes currently collected by the NTD, providing the flexibility for agencies to expand these types of arrangements into other modes of service would be possible by organizing the data by type of service rather than mode.

The FTA proposes a new type of service to collect information on transit provided by TNCs defined as follows: The Transportation Network Company (TN) type of service is for demand response transportation service provided by a transportation network company on behalf of a public transportation agency using a non-dedicated fleet. Services are open to the general public and are dispatched by the transportation network company using a mobile application. The FTA notes that several partnerships between TNCs and transit systems are currently funded as pilot programs through the Mobility on Demand Sandbox Program. As pilot programs are not ''regular and continuing,'' they are not currently reportable to the NTD. The new ''TN'' type of service, however, will be available for use for any partnership agreements that advance beyond the pilot stage, and which meet the definition of *public transportation,* including potential pilot projects originally funded through the FTA Mobility on Demand (MOD) Sandbox Program.

C. Changes to the A–30 Revenue Vehicle Asset Forms

a. Add New Data Element To Identify Automated Vehicles

In response to the growth in automated vehicle technology, FTA proposes adding a new data element to the A–30 Revenue Vehicle Inventory form to identify automated or autonomous vehicles. This information would be collected through a check box available by fleet to indicate if the vehicle fleet is comprised of automated vehicles. Agencies operating an automated or autonomous fleet of vehicles, be they rail or roadway vehicles, would check the box to indicate the fleet as such. If the fleet is not automated or autonomous, reporters would leave this box empty.

In addition, FTA proposes the following definition, which aligns with level 4 of the SAE International standard of automation, for inclusion in the NTD glossary to clarify this new requirement: A vehicle that is capable of performing all driving functions without human input under certain conditions.

The FTA estimates that the burden for this additional data element is negligible and proposes implementing this change in report year 2019.

The FTA considered proposing a new mode for either autonomous rail or autonomous roadway shuttle operations, but did not believe that this would benefit NTD stakeholders. The FTA welcomes comments, however, on whether it should reconsider creating a separate mode for autonomous vehicles, rather than simply recording autonomous vehicles on the asset inventory. Currently, autonomous rail vehicles, commonly called ''people movers'' are classified in the monorail/automated guideway (mode ''MG'') mode within the NTD. This mode also includes the Morgantown (West Virginia) personal rapid transit system as well as the Seattle Monorail System, which does not operate autonomously. A transit agency deploying an autonomous train in the future would classify those operations in the relevant mode, *e.g.* the heavy rail (mode ''HR'') mode. Likewise, under current policy, a transit system operating an autonomous roadway vehicle with a fixed route would generally be classified in the existing bus (mode ''MB'') mode. The FTA currently proposes to only collect whether autonomous vehicles capable of level 4 operations are in the fleet, and seeks comment on whether it should begin collecting data on the duration of autonomous operations either within the various existing modes, or as one more separate mode.

b. New Reporting on Safety Equipment on Rail Transit Vehicles

The FTA proposes the collection of the following new data elements on the A–30 Revenue Vehicle Inventory form for rail transit vehicle types, unless otherwise specified below:

A. Number of fleet vehicles with event data recorders based on IEEE 1482.1 standard;

B. Number of fleet vehicles with emergency Lighting System Design based on APTA RT–S–VIM–20–10 standard;

C. Number of fleet vehicles with emergency signage based on APTA RT–S–VIM–021–10 standard;

D. Number of fleet vehicles with low-location Emergency Path Marking based on APTA RT–S–VIM–022–10 standard.

These safety equipment standards are identified for inclusion in the National Safety Program Plan requirements of the MAP–21 and FAST Act legislation. As such, they are also included in FTA's National Safety Plan. These standards also address National Transportation Safety Board (NTSB) open recommendations to FTA. The FTA would use this additional data to assess industry risk levels and to inform accident investigations.

This new reporting would apply to all rail transit vehicle types. The FTA currently recognizes 11 rail transit vehicle types: Automated guideway vehicle (AG); cable car (CC); heavy rail passenger car (HR); light rail vehicle (LR); inclined plane vehicle (IP); monorail/automated guideway (MO); commuter rail locomotive (RL); commuter rail passenger coach (RP); commuter rail, self-propelled passenger car (RS); streetcar (SR) and, vintage trolley (VT).

The FTA estimates that the burden to report this information is minimal, as FTA believes that rail fleet maintenance departments already track this information as part of their overall maintenance programs. The FTA welcomes comments on whether reporting these data for rail fleets would in fact be a *de minimis* burden. The FTA emphasizes that it is not proposing to collect these data for roadway vehicle fleets.

D. Changes to the A–20—Adjust the Reporting Categories for Special Trackwork

In report year 2018, transit agencies must begin reporting expanded asset data to the NTD. The new asset forms were open in the NTD system for

optional reporting in report year 2017. Approximately 14% of rail agencies reported their track and guideway assets on a voluntary basis in the optional reporting year.

After completing the optional report year, FTA received several requests from rail agencies to change the special track work categories available on the A–20 form. Agencies felt the current categories did not allow them to properly report their special trackwork to the NTD. In response to these requests, FTA is proposing to remove one category, add three new categories, and rename an existing category.

The A–20 form currently collects the following special track work categories: Half grand union, single turnout, single crossover, and double diamond crossover. The FTA is proposing the following modifications (1) remove *half grand union,* (2) rename *double diamond crossover* to *double crossover,* and (3) include three new special track work categories: *Slip switch, lapped turnout,* and *rail crossing.*

Proposed definitions and illustrations of the proposed category changes can be viewed on the NTD website at *https://www.transit.dot.gov/ntd/ntd-asset-inventory-module.*

E. Reporting on the Use of Automatic Passenger Counters

The FTA is proposing the inclusion of a new data element on the D–10 CEO Certification form to collect information on the use of Automatic Passenger Counters (APC). The proposed reporting would be yes/no selection inquiring whether agencies currently use APC equipment on their transit fleet. Reporters using APC equipment to report ridership and passenger miles travelled information to the NTD are currently required to certify their equipment with the FTA once every 3 years. The FTA is also proposing a new data field on the D–10 to record the date of the agency's last APC certification approval. This field would be populated by the FTA for record keeping and would not require additional data input from the reporter.

F. New Reporting on Vehicle Revenue Miles by State for Urbanized Area Reporters

The FTA receives frequent requests from policy makers to identify the amount of transit service provided in each state. NTD currently collects the breakdown of vehicle revenue miles (VRM) provided in each state for rural agencies operating across state lines. However, urban reporters that operate in two or more states do not provide the same breakdown. The FTA is proposing an amendment to the FFA–10 that would allow reporters to provide their VRM to allocate their VRM by mode and state on the FFA–10.

G. Changes to Safety Event Reporting

a. Clarification of Reportable Attempted Suicides

The FTA has identified inconsistencies in the way agencies report an attempted suicide to the NTD. To improve data quality, FTA is providing a clarification of a reportable attempted suicide.

Attempted suicides are reported to the NTD as a security event. Current guidance on how to report this information can be found in the 2018 Safety Manual located on the NTD website: *www.transit.dot.gov/ntd.* However, if an attempted suicide results in an injury requiring immediate medical transport away from the transit property, it is reportable as a major event.

In some cases, an agency is reporting an incident as an attempted suicide when an individual notifies transit personnel that they are having suicidal thoughts and medical personnel are called to assist the individual. The majority of reporters, however, are not reporting this type of incident to the NTD as an attempted suicide. This difference in understanding leads to discrepancies in the data reported to the NTD.

To address these differing interpretations, FTA proposes the following definition of *attempted suicide:* Self-inflicted harm where death does not occur, but the intention of the person was to cause a fatal outcome. The attempt and intent must be accounted for by a third party in the form of police reports, security personnel reports, or other eyewitness statements.

The FTA further proposes including the following reporting note to the 2019 Safety and Security reporting manual to clarify the proposed definition: If there was no documented suicide attempt and the individual was transported only for a mental health evaluation, the event is to be reported on the Non-Major Monthly Summary report.

b. Modify Data Collection on Vehicles Involved in Reportable Safety Events

The NTD currently captures detailed reports for major safety events—events that meet one or more of FTA's major reporting thresholds. Data collected include information about the impacts of the event (injuries, fatalities, damages), the conditions at the time of the event, and the specifics of the vehicles involved (speed, action, manufacturer).

The NTD also captures detailed asset data for each agency's vehicle fleets through the annual reporting process. These fleet records include details on vehicle length, fuel type, age, manufacturer, and more.

Although both streams of data are available in the NTD, these two data sets (major safety events and vehicle fleets) are not currently linked in the system. This means that a data user cannot identify the vehicle fleet information for a vehicle involved in a major safety event.

The current data structure limits FTA's and the industry's ability to identify safety concerns, assess risk, and develop and monitor mitigations. To improve the usability of the NTD data, FTA proposes modifying the NTD's safety event forms to require reporters to identify the vehicle fleet information from their annual report through a menu of their active fleets.

FTA anticipates that this change will reduce reporting burden. By linking the existing vehicle inventory to the safety forms, agencies will no longer have to enter redundant information on a vehicle involved in a safety event. They will now be able to select the fleet from a drop-down menu and all data will be autopopulated from their inventory to the safety form. This change would be applicable to all major events involving a revenue vehicle.

c. Add Information on Drug and Alcohol Post-Accident Testing

The NTD does not currently capture information on whether a major incident required drug and alcohol post-accident testing per 49 CFR 655.44—Post-accident testing. It would be useful for both the FTA and/or State Safety Oversight Agencies to track this information at the incident level to support accident investigations and evaluate agency compliance with this requirement.

The FTA proposes including the following questions to all NTD major event reporting: (1) Was FTA Drug and Alcohol Post-Accident Testing required? If agencies answer yes to the first question, they will be prompted to answer the second question: (2) Was FTA Drug and Alcohol Post-Accident Testing completed? Agencies would provide answers to each question via a yes/no check box.

The estimated burden to report this information to the NTD is minimal as agencies already have obligations regarding documenting post-accident testing and providing records to FTA upon request.

H. Clarification on Reporting a Temporary Bus Bridge Service Information

The FTA has received a request to clarify when mode-level service is reportable for a temporary bus bridge. Several agencies have expressed a concern that the cost of tracking the detailed information necessary to report a temporary bus bridge as a new mode to the NTD outweighs the benefits of the potential funds generated through the FTA formula apportionment programs from these temporary services.

The FTA proposes the following clarification: In cases where a temporary bus bridge, using a new mode or type of service, is put into place in response to a capital project or emergency repair, the reporting agency is not required to create a new mode in the NTD reporting system to report service and financial information to NTD. In these cases, the cost of the service should be reported in the appropriate operating cost functions (if due to an emergency situation) or capital costs functions (if due to a capital project).

If grantees would like to receive credit for the service provided by a temporary bus bridge using a new mode in the FTA formula apportionment programs, the grantee may opt to create a new mode in the NTD. Service provided via a bus bridge for a rail mode is not reportable to the NTD under the rail mode. Reporters may not include the vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and passenger miles from the temporary bus bridge in their reported rail mode. They must create a new mode to report this service to the NTD.

Agencies implementing a temporary bus bridge through an existing mode (*i.e.,* a mode they currently report to the NTD) should report the temporary bus bridge cost and service information to the NTD as part of their existing mode reporting.

I. Clarification of Incidental Use for Transit Asset Reporting

The FTA has begun collecting additional information on transit assets in report year 2018. Current guidance for reporting inventory and condition information on administrative and maintenance facilities states that an agency must report detailed asset and condition information if they have capital replacement responsibility, with an exemption for facilities where the use by transit providers is considered incidental. An example of this type of arrangement would be a city department of transportation that uses a single office or small suite within a large city hall building or a county-owned maintenance facility that services a large number of county maintenance vehicles including a very small number of vehicles used for transit. In these instances, FTA would consider the transit provider's use of the facility to be incidental and would not require reporting of inventory or condition information to the NTD.

NTD reporters have asked for a clarification of the term *incidental use* for the purposes of reporting. The FTA seeks comment on its proposal to clarify that *incidental use* applies when 50 percent or less of the facility's physical space is dedicated to the provision of public transportation service.

J. Allow for Separate Mode Reporting for Geographically and Resource Separated Modes

In a few cases, a transit agency may run two geographically and/or resource separated services that share the same mode. For example, an agency might run two light rail systems that are physically located on opposite sides of the state and have a separate vehicle fleet and workforce. Under current NTD reporting guidance, these services would be reported as a single mode if they are run by a single agency. Thus, despite the fact that they are geographically separated and do not share resources, their financial and service data is captured in the NTD in a single mode.

The intent of collecting NTD data by mode and type of service is to provide a clear presentation of the resources necessary to run a single mode of service. The current data structure obscures this presentation for systems that run two geographically and resource separated services. Combining this information in the data set reduces the usability of the data for stakeholders.

The FTA proposes requiring agencies with geographically or resource separated modes of service to report them as two separate modes in the NTD. Under this requirement, agencies would report the financial, service, and asset information separately to the NTD rather than combining the information to report as a single mode. The FTA anticipates that the additional reporting burden of this proposal would be small, as FTA is only aware of one case where two resource-separated services are not already being reported separately. Reporters currently maintain separate internal records for resource-separated services, so this proposal would allow grantees to report to the NTD in a way that more closely matches their internal records.

K. Clarification on Commuter Service Survey Standards

Current FTA policy requires an agency to provide a passenger survey of new commuter service to the NTD to establish that it meets the criteria for reportable commuter rail, bus, or ferry service. The FTA considers service to be commuter service if at least 50 percent of passengers make a return trip on the same day across all service runs for one year. The FTA proposes to update this policy so that the survey must meet the following criteria:

1. The agency must conduct the survey over a 12-month period, to account for seasonal variations in passenger behavior.

2. The agency must include the entire length of each route in the survey, including all times of day, and all days of the year.

3. If sampling by passengers, each passenger for the entire year must be given an equal chance of selection. If sampling by vehicle operations, each vehicle operation for the entire year must be given an equal chance of selection, weighted by the anticipated passenger count on each vehicle. If any other strata are used in the sample design, each strata must meet FTA's requirements.

4. For the purpose of calculating return trips, a passenger making a single round trip in a given day cannot be surveyed twice for inclusion in the final calculation. The calculation establishing whether 50 percent of riders make a same-day round trip must be calculated as: (total unique passengers making same-day return trip)/((total unique passengers making same-day return trip) + (total unique passengers making an overnight trip)).

5. A person may be counted as making a same-day return trip if the person makes one leg of the trip by another means of transportation.

6. The survey must determine that at least 50 percent of passengers on each route make a return trip on the same day, with 95 percent confidence.

7. A qualified statistician must approve the survey methodology, the sample size, and the sampling methodology and certify that the results give the required level of confidence.

If at least 50 percent of all passengers surveyed on a route made a return trip on the same day, or reported their intention to do so, then FTA will permit the agency to report that route to the NTD as a commuter service.

Eligible commuter service is fully attributable to an urbanized area if at least 50 percent of passengers are making a return trip on the same day.

If the service does not meet this threshold, it would be considered intercity service. On intercity ferry and rail services that meet the definition of *public transportation,* all portions of the service located outside the boundaries of the urbanized area would be attributable at a rate of 27 percent per 49 U.S.C. 5336.

L. Clarification on Reporting Linear Miles and Track Miles to the Asset Inventory

The guidance published with the final reporting requirements for guideway infrastructure did not clearly state definitions and reporting requirements for *linear miles* and *track miles.* The FTA proposes the following definitions of *linear miles* and *track miles* as referenced in the NTD Policy Manual. *Linear miles* is defined as ''the length in miles of the route path of track—regardless of multiple track railways over the same area'' and *track miles* is defined as the ''cumulative length in miles of all track—including multiple track railways over the same area. This should represent the total length of all laid track.''

Earlier guidance appeared to imply that agencies must report both linear miles and track miles for guideway infrastructure. The FTA proposes to clarify that agencies may report either linear miles, or track miles, or both for the purposes of asset condition and performance reporting of guideway infrastructure to the NTD.

M. Clarification on Rural Financial Data Reporting Requirement

The updated Uniform System of Accounts (USOA), effective beginning Fiscal Year 2018, states that to report the total costs of delivering each mode of transit service, transit agencies must calculate both direct and shared costs of providing service. Agencies may continue to allocate shared costs based on approved cost allocation methods. This is consistent with Generally Accepted Accounting Principles.

The FTA clarifies that recipients of Rural Area Formula Program (49 U.S.C. 5311) funding must report operating expenses and fare revenues by mode and type of service. State DOT recipients must report this data for each Section 5311 subrecipient beginning in Fiscal Year 2019.

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2019–06943 Filed 4–8–19; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Notice Regarding Unauthorized Access to Customer Information

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, ''Notice Regarding Unauthorized Access to Customer Information.''

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0227, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0227'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0227'' or ''Notice Regarding Unauthorized Access to Customer Information.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each revision or extension of an existing collection of information, before

[1] Following the close of the 60-day comment period for this notice, the OCC will publish a notice for 30 days of comment for this collection.

submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Notice Regarding Unauthorized Access to Customer Information.

OMB Control No.: 1557–0227.

Description: Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) requires the OCC to establish appropriate standards for national banks relating to administrative, technical, and physical safeguards: (1) To insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to, or use of, such records or information that could result in substantial harm or inconvenience to any customer.

The Interagency Guidelines Establishing Information Security Standards, 12 CFR part 30, appendix B (Security Guidelines), which implement section 501(b), require each entity supervised by the OCC (supervised institution) to consider and adopt a response program, as appropriate, that specifies actions to be taken when the supervised institution suspects or detects that unauthorized individuals have gained access to customer information systems.

The Interagency Guidance on Response Programs for Unauthorized Customer Information and Customer Notice (Breach Notice Guidance),[2] which interprets the Security Guidelines, states that, at a minimum, a supervised institution's response program should contain procedures for:

(1) Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

(2) Notifying its primary federal regulator as soon as possible when the supervised institution becomes aware of an incident involving unauthorized access to, or use of, sensitive customer information;

(3) Notifying appropriate law enforcement authorities in situations involving Federal criminal violations requiring immediate attention, consistent with the OCC's Suspicious Activity Report regulations;

(4) Taking appropriate steps to contain and control the incident in an effort to prevent further unauthorized access to, or use of, customer information, for example, by monitoring, freezing, or closing affected accounts, while preserving records and other evidence; and

(5) Notifying customers when warranted.

The Breach Notice Guidance states that, when a financial institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to determine the likelihood that the information has been misused. If the institution determines that the misuse of its information about a customer has occurred or is reasonably possible, it should notify the affected customer as soon as possible.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Total Estimated Annual Burden: 720 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: April 3, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–06922 Filed 4–8–19; 8:45 am]

BILLING CODE 4810–33–P

[2] 12 CFR part 30, appendix B, supplement A.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Payments Made in Settlement of Payment Card and Third-Party Network Transactions

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 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 information reporting for payments made in settlement of payment card and third-party network transactions.

DATES: Written comments should be received on or before June 10, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Payments Made in Settlement of Payment Card and Third-Party Network Transactions.

OMB Number: 1545–2205.

Regulation Project Number: TD 9496, Form 1099–K.

Abstract: This information collection covers final regulations implementing amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting under sections 6041, 6041A, 6050W, and 6051 of the Internal Revenue Code (Code). The form reflects payments made in settlement of merchant card and third-party network transactions for purchases of goods and/or services made with merchant cards and through third-party networks.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 9,436,100.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 4,529,328.

The following paragraph applies to all 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 if 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.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: April 2, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–06921 Filed 4–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Increase in Maximum Tuition and Fee Amounts Payable Under the Post-9/11 GI Bill

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the increase in the Post-9/11 GI Bill maximum tuition and fee amounts payable and the increase in the amount used to determine an individual's entitlement charge for reimbursement of a licensing, certification, or national test for the 2019–2020 academic year.

FOR FURTHER INFORMATION CONTACT: Rodney Hopkins, Management and Program Analyst, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Telephone: (202) 461–9800. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: For the 2019–2020 academic year, the Post-9/11 GI Bill allows VA to pay the actual net cost of tuition and fees not to exceed the in-state amounts for students pursuing training at public schools; $24,476.79 for student training at private and foreign schools; $13,986.72 for student training at vocational flight schools; and $11,888.70 for student training at correspondence schools. In addition, the entitlement charge for individuals receiving reimbursement of the costs associated with taking a licensing, certification, or national test will be pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,042.06 for one month. The maximum reimbursable amount for a licensing or certification test will be $2000. There will be no maximum reimbursable amount for national tests.

Sections 3313, 3315, and 3315A of title 38, United States Code, direct VA to increase the maximum tuition and fee payments and entitlement-charge amounts each academic year (beginning on August 1st) based on the most recent percentage increase determined under 38 U.S.C. 3015(h). The most recent percentage increase determined under 38 U.S.C. 3015(h) was 3.4 percent, which was effective on October 1, 2018.

The maximum tuition and fee payments and entitlement charge amounts for training pursued under the Post-9/11 GI Bill beginning after July 31, 2019, and before August 1, 2020 are listed below. VA's calculations for the 2019–2020 academic year are based on the 3.4 percent increase.

2019–2020 ACADEMIC YEAR

Type of school	Actual net cost of tuition and fees not to exceed
Post-9/11 GI Bill Maximum Tuition and Fee Amounts	
PUBLIC	In-State/Resident Charges.
PRIVATE/FOREIGN	$24,476.79.
VOCATIONAL FLIGHT	$13,986.72.
CORRESPONDENCE	$11,888.70.
Post-9/11 Entitlement Charge Amount for Tests	
LICENSING AND CERTIFICATION TESTS	Entitlement will be pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,042.06 for one month. The maximum reimbursable amount for a licensing or certification test is $2000.
NATIONAL TESTS	Entitlement will be pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,042.06 for one month. There is no maximum reimbursable amount for national tests.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 3, 2019, for publication.

Dated: April 4, 2019.

Luvenia Potts,

Program Specialist, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–06978 Filed 4–8–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Gulf of Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG736

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Gulf of Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey in the Gulf of Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 9, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.redding@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Gray Redding, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

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

Accordingly, NMFS plans to adopt the National Science Foundation's (NSF) EA, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NMFS is a cooperating agency on NSF's EA. NSF's EA will be made available for public comment at *https://www.nsf.gov/geo/oce/envcomp/* on approximately April 1, 2019. 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 November 20, 2018, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to conducting seismic geophysical surveys in the Gulf of Alaska along the Alaska Peninsula subduction zone. On December 19, 2018, NMFS received a revised copy of the application, and that application was deemed adequate and complete on February 11, 2019. L–DEO's request is for take of a small number of 21 marine mammal species by Level B harassment and Level A harassment. Underwater sound associated with airgun use may result in the behavioral harassment or auditory injury of marine mammals in the ensonified areas. Neither L–DEO nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to L–DEO for similar work (76 FR 38621; July 1, 2011). L–DEO complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the ''Description of Marine Mammals in the Area of Specified Activities.''

Description of Proposed Activity

Overview

The specified activity consists of a high energy geophysical seismic survey conducted in a portion of the Gulf of

Alaska. Researchers from Lamont-Doherty Earth Observatory (L–DEO), Cornell University, Colgate University, University of Washington, University of California Santa Cruz, University of Colorado Boulder, University of New Mexico, Washington University in St. Louis, and the United States Geological Survey (USGS), with funding from NSF, propose to conduct the seismic survey from the Research Vessel (R/V) *Marcus G. Langseth* (*Langseth*) in the Gulf of Alaska during 2019. The NSF-owned *Langseth* is operated by Columbia University's L–DEO under an existing Cooperative Agreement. The proposed seismic survey would likely occur off the Alaska Peninsula and the eastern Aleutian islands during late spring 2019 and would use a 36-airgun towed array with a total discharge volume of ~6600 in^3. The survey would take place within the U.S. Exclusive Economic Zone (EEZ), in water ~15 to ~6,184 m deep.

The main goal of L–DEO's proposed seismic program is to conduct a 2D survey along the Alaska Peninsula subduction zone using airguns. The addition of active sources (airguns) to the existing seismic monitoring equipment in place would directly contribute to the overall project goals of imaging the architecture for the subduction zone and understanding the structures controlling how and where the planet's largest earthquakes occur.

Dates and Duration

The survey is expected to consist of up to 18 days of seismic operations and ~1 day of transit. The *Langseth* would leave from and return to port in Kodiak, likely during late spring (end of May/early June) 2019. Tentative sail dates are 1–19 June 2019.

Timing of the proposed survey will take advantage of the Alaska Amphibious Community Seismic Experiment (AACSE), which has deployed 75 ocean bottom seismometers (OBSs) offshore of the Alaska Peninsula. The survey needs to be conducted while the AACSE OBSs are on the sea floor (before 6 August 2019). The most value-added time window is mid-May through mid-June, when an on-shore seismic array, consisting of 400–450 onshore seismometers will also be deployed on Kodiak Island and which could record an unprecedented ship-to-shore dataset.

Specific Geographic Region

The proposed survey would occur within the area of ~52–58° N, ~150–162° W, within the EEZ of Alaska in water depths ranging from ~15 to ~6184 m. Representative survey tracklines are shown in Figure 1. As described further in this document, however, deviation in actual track lines, including order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. Thus, within the constraints of any federal authorizations issued for the activity, tracklines may shift from those shown in the application and could occur anywhere within the coordinates noted above and illustrated by the box in the inset map on Figure 1 of the IHA application.

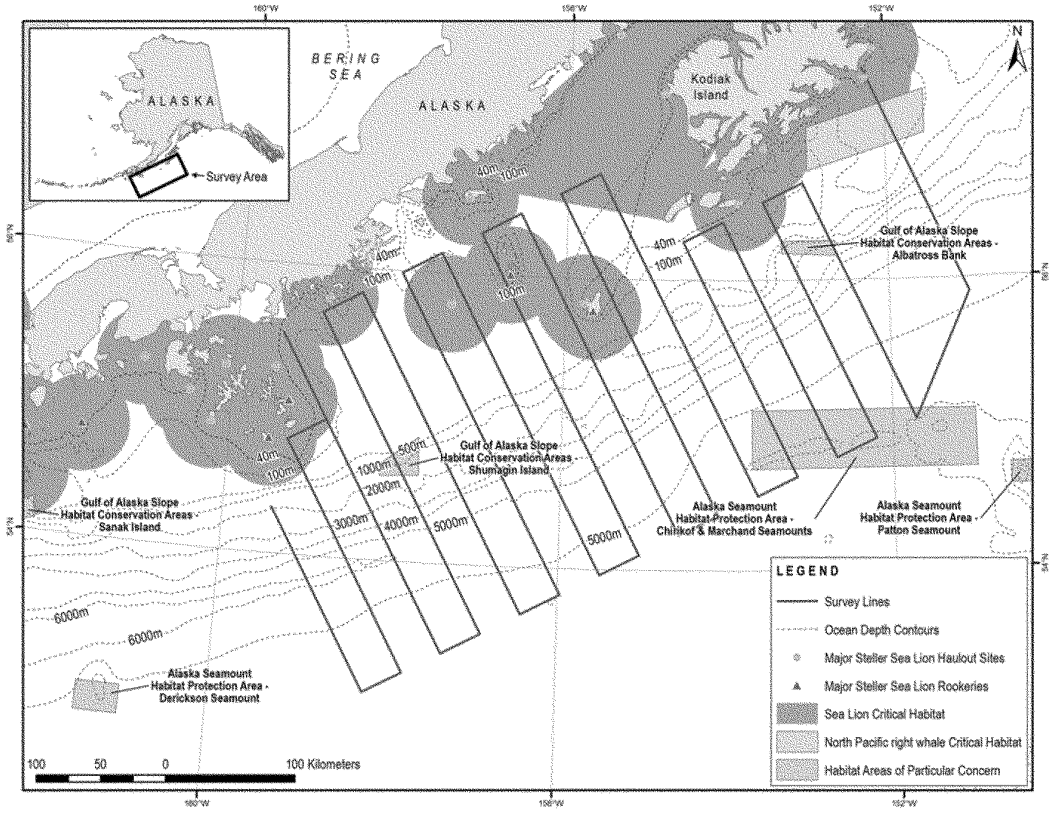

Figure 1. Map of the proposed 2019 seismic survey off the Alaskan Peninsula showing representative survey lines.

Detailed Description of Specific Activity

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, the *Langseth,* which is owned by NSF and operated on its behalf by Columbia University's L–DEO. The *Langseth* would deploy an array of 36 airguns as an energy source with a total volume of ~6,600 in^3. The receiving system would consist of previously deployed OBSs and onshore seismometers (See Figure 2 in IHA Application), as well as a single hydrophone streamer 5 kilometers (km) in length; no hydrophone streamer would be towed during the survey. As the airgun arrays are towed along the survey lines, the seismometers would receive and store the returning acoustic signals internally for later analysis and the hydrophone streamer would transfer the data to the on-board processing system.

For this proposed survey, a total of ~4400 km of transect lines would be surveyed in the Gulf of Alaska (GOA). There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. To account for unanticipated delays, 25 percent has been added in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed. During the survey, approximately 13 percent of the line km would take place in shallow water (<100 meter (m)), 27 percent would occur in intermediate water depths (100–1000 m), and the rest (60 percent) would occur in deep water (>1000 m).

In addition to the operations of the airgun array, the ocean floor would be mapped with a Kongsberg EM 122 multibeam echosounder (MBES) and a Knudsen Chirp 3260 sub-bottom profiler (SBP). A Teledyne RDI 75 kilohertz (kHz) Ocean Surveyor Acoustic Doppler Current Profiler (ADCP) would be used to measure water current velocities. These sources would be operated from the *Langseth* continuously during the seismic survey, but not during transit to and from the survey areas. All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have proposed the studies. The vessel would be self-contained, and the crew would live aboard the vessel.

During the survey, the *Langseth* would tow the full array, consisting of four strings with 36 airguns (plus 4 spares) and a total volume of ~6,600 in^3. The 4-string array would be towed at a depth of 12 m, and the shot intervals would be 399.3 m for the entire survey.

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; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the Gulf of Alaska 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 (2017). 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.

Sixteen species of cetaceans and five species of pinnipeds could occur in the proposed Gulf of Alaska survey area. Cetacean species include seven species of mysticetes (baleen whales) and nine species of odontocetes (dolphins and small and large toothed whales).

Ferguson *et al.* (2015) described Biological Important Areas (BIAs) for cetaceans in the Gulf of Alaska. BIAs were delineated for four baleen whale species and one toothed whale species including fin, gray, North Pacific right, and humpback whales, and belugas in U.S. waters of the Gulf of Alaska. BIAs are described in the following sections for each marine mammal species, except for beluga whale BIAs, as these do not co-occur within L–DEO's proposed survey area and the species is not expected to be present there. BIAs are delineated for feeding, migratory corridors, and small and resident populations. Supporting evidence for these BIAs came from aerial-, land-, and vessel-based surveys; satellite tagging data; passive acoustic monitoring; traditional ecological knowledge; photo- and genetic-identification data; whaling data, including catch and sighting locations and stomach contents; prey studies; and observations from fishermen.

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, stock abundance estimates are not available, and survey abundance estimates are used. This survey area may or may not align completely with a stock's geographic range as defined in the SARs. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska and U.S. Pacific SARs (*e.g.,* Muto *et al.* 2018, Carretta *et al.* 2018). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.* 2018, Carretta *et al.* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	138
		Western North Pacific	E, D, Y	175 (0.05, 167, 2016)	0.07	UNK
Family Balaenidae:						
North Pacific right whale	*Eubalaena japonica*	Eastern North Pacific	E, D, Y	31 (0.226, 26, 2015)	0.05 b	0
Family Balaenopteridae (rorquals):						
Blue whale	*Balaenoptera musculus*	Eastern North Pacific	E, D, Y	1,647 (0.07, 1,551, 2011)	2.3	≥0.2
		Central North Pacific	E, D, Y	133 (1.09, 63, 2010)	0.1	0
Fin whale * [4]	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	3,168 [4]	5.1	0.6
Sei whale	*Balaenoptera borealis*	Eastern North Pacific	E, D, Y	519 (0.4, 374, 2014)	0.75	0
Minke whale * [5]	*Balaenoptera acutorostrata*	Alaska	-, -, N	1,233 [5]	UND	0
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-, -, Y	10,103 (0.3, 7,890, 2006)	83	25
		Western North Pacific	E, D, Y	1,107 (0.3, 865, 2006)	3	3.2
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale *	*Physeter macrocephalus*	North Pacific	E, D, Y	N/A (see SAR, N/A, 2015)	see SAR	4.4
Family Ziphiidae (beaked whales):						
Cuvier's beaked whale	*Ziphius cavirostris*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Baird's beaked whale	*Berardius bairdii*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Stejneger's beaked whale.	*Mesoplodon stejnegeri*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	2,347 c (N/A, 2347, 2012)	24	1
		Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	-, -, N	587 c (N/A, 587, 2012)	5.87	1
		AT1 Transient	-, D, Y	7 c (N/A, 7, 2017)	0.01	0
		Offshore	-, -, N	240 (0.49, 162, 2014)	1.6	0
Risso's dolphin	*Grampus griseus*	CA/WA/OR	-, -, N	6,336 (0.32, 4,817, 2014)	46	≥3.7
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	GOA	-, -, Y	31,046 (0.214, N/A, 1998)	UND	72
		Southeast Alaska	-, -, Y	see SAR (see SAR, see SAR, 2012).	8.9	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	T, D, Y	41,638 a (see SAR, 41,638, 2015).	2,498	108
		Western U.S.	E, D, Y	54,267 a (see SAR, 54,267, 2017).	326	252
California sea lion	*Zalophus californianus*	U.S.	-, -, N	296,750 (N/A, 153,337, 2011).	9,200	389
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	-, D, Y	620,660 (0.2, 525,333, 2016).	11,295	457
Family Phocidae (earless seals):						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	179,000 (N/A, 81,368, 2010)	4,882	8.8
Harbor seal	*Phoca vitulina*	South Kodiak	-, -, N	19,199 (see SAR, 17,479, 2011).	314	128
		Cook Inlet/Shelikof Strait	-, -, N	27,386 (see SAR, 25,651, 2011).	770	234
		Prince William Sound?	-, -, N	29,889 (see SAR, 27,936, 2011).	838	279

* Stocks marked with an asterisk are addressed in further detail in text below.

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

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[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).

[4] Uncorrected estimate from Rone *et al.* (2017) based on a series of line-transect surveys off of Kodiak Island. The maximum estimate from the three surveys was selected. Based on the limited footprint of the surveys that lead to this estimate, the true abundance of the stock is expected to be much higher.

[5] Uncorrected estimate from Zerbini *et al.,* (2006) based on a partial line-transect survey of the Gulf of Alaska.
Note—Italicized species or stocks are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 1. With the exception of AT1 transient killer whales, these species or stocks temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. However, the spatial occurrence of the AT1 transient is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

AT1 transient killer whales are a small, genetically distinct population of transient ecotype killer whales found in the Gulf of Alaska (Matkin *et al.* 1999). The population has declined from a size of 22 whales in 1984, to just 7 today, and it is believed this decline was associated with the Exxon Valdez Oil Spill in 1989 (Matkin *et al.* 2008). AT1 transients have only ever been seen in Prince William Sound and in the Kenai Fjords region (Muto *et al.* 2018; Matkin *et al.* 2008). Therefore, while the stock is present in the Gulf of Alaska, and deserved consideration, the limited range of the stock and the fact that this range does not overlap with L–DEO's proposed survey means take is not likely to occur for the AT1 stock of transient killer whales.

No comprehensive abundance estimate is available for the Alaska stock of minke whales. The best available estimate for the area comes from line-transect surveys conducted in shelf and nearshore waters (within 30–45 nautical miles of land) in 2001–2003 between the Kenai Peninsula (150° W) and Amchitka Pass (178° W). Minke whale abundance was estimated to be 1,233 (CV = 0.34) for this area (not been corrected for animals missed on the trackline) (Zerbini *et al.* 2006). The majority of the sightings were in the Aleutian Islands, rather than in the Gulf of Alaska, and in water shallower than 200 m. This estimate cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. Similarly, although a comprehensive abundance estimate is not available for the northeast Pacific stock of fin whales, there are provisional estimates representing relevant portions of the range. Zerbini *et al.* (2006) produced an estimate of 1,652 (95 percent CI: 1,142–2,389) fin whales for the area described above. Additionally, a series of line-transect surveys off of Kodiak Island and the in the northern Gulf of Alaska conducted in 2009, 2013, and 2015, generated a maximum estimate of 3,168 (CV = 0.26) (also not been corrected for animals missed on the trackline) (Rone *et al.* 2017).

Kato and Miyashita (1998) reported 102,112 sperm whales (CV = 0.155) in the western North Pacific, however, with the caveat that their estimate is likely positively biased. From surveys in the Gulf of Alaska in 2009 and 2015, Rone *et al.* (2017) estimated 129 (CV = 0.44) and 345 sperm whales (CV = 0.43) in each year, respectively. The overall number of sperm whales occurring in Alaska waters is unknown (Muto *et al.* 2018).

For the three species of beaked whale expected to occur in the area (Baird's, Cuvier's, and Stejneger's), there are no reliable estimates of abundance.

We have reviewed L–DEO's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. Below, for the 21 species that are likely to be taken by the activities described, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence.

In addition, the northern sea otter (*Enhydra lutris*) and Pacific walrus (*Odobenus rosmarus divergens*) may be found in the Gulf of Alaska. However, northern sea otter and Pacific walrus are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Mysticetes

North Pacific Right Whale (*Eubalaena japonica*)

North Pacific right whales summer in the northern North Pacific, primarily in the Okhotsk Sea (Brownell *et al.* 2001) and in the Bering Sea (Shelden *et al.* 2005; Wade *et al.* 2006). This species is divided into western and eastern North Pacific stocks. The eastern North Pacific stock that occurs in U.S. waters numbers only ~31 individuals (Wade *et al.* 2011b), and critical habitat has been designated in the eastern Bering Sea and in the GOA, south of Kodiak Island (NMFS 2017b). Wintering and breeding areas are unknown, but have been suggested to include the Hawaiian Islands, Ryukyu Islands, and Sea of Japan (Allen 1942; Banfield 1974; Gilmore 1978; Reeves *et al.* 1978; Herman *et al.* 1980; Omura 1986).

Since the 1960s, North Pacific right whale sightings have been relatively rare (*e.g.,* Clapham *et al.* 2004; Shelden *et al.* 2005). In the eastern North Pacific, south of 50 °N, only 29 reliable sightings were recorded from 1900 to 1994 (Scarff 1986, 1991; Carretta *et al.* 1994). Starting in 1996, right whales have been sighted regularly in the southeast Bering Sea, including calves in some years (Goddard and Rugh 1998; LeDuc *et al.* 2001; Moore *et al.* 2000, 2002b; Wade *et al.* 2006; Zerbini *et al.* 2009); they have also been detected acoustically when sonobuoys were deployed (McDonald and Moore 2002; Munger *et al.* 2003, 2005, 2008; Berchok *et al.* 2009). Right whales are known to occur in the southeast Bering Sea from May to December (*e.g.,* Tynan *et al.* 2001; Hildebrand and Munger 2005; Munger *et al.* 2005, 2008). Call frequencies tended to be higher in July–October than from May–June or November–December (Munger *et al.* 2008). Right whales seem to pass through the middle-shelf areas, without remaining there longer than a few days (Munger *et al.* 2008).

Shelden *et al.* (2005) reported that the slope and abyssal plain in the western GOA were important areas for right whales until the late 1960s, but sightings and acoustic detections in this region in recent decades are rare. In March 1979, a group of four right whales was seen in Yakutat Bay (Waite *et al.* 2003), but there were no further reports of right whale sightings in the GOA until July 1998, when a single whale was seen southeast of Kodiak Island (Waite *et al.* 2003). Three sightings and one acoustic detection of right whales were made in Barnabas Trough south of Kodiak Island during NOAA surveys in 2004 to 2006 in areas with high densities of zooplankton (Wade *et al.* 2011a). Those authors also report a fourth opportunistic sighting by a commercial fisher during that time in the same area. One right whale was sighted in the Aleutian Islands south of Unimak Pass in September 2004 (Wade *et al.* 2011b). A BIA for feeding for North Pacific right whales was designated east of the Kodiak Archipelago, encompassing the GOA critical habitat and extending south of 56° N and north of 58° N and beyond the shelf edge (Ferguson *et al.* 2015). Feeding primarily occurs in this BIA between June and September (Ferguson *et al.* 2015)

Right whale acoustic detections were made south of the Alaska Peninsula and to the east of Kodiak Island in 2000 during August and September (see

Waite *et al.* 2003; Mellinger *et al.* 2004b), but no acoustic detections were made from April to August 2003 (Munger *et al.* 2008) or in April 2009 (Rone *et al.* 2010). Three right whales were acoustically detected in the Barnabas Trench area during a towed-PAM survey of the U.S. Navy training area east of Kodiak in the summer of 2013 but none were observed visually (Rone *et al.* 2014). Right whales were not consistently detected acoustically from (2011–2015) with the fixed PAM monitoring in this region (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015), but there were detections on two days in June and August 2013 (Debich *et al.* 2014). No right whales were visually observed during the three years of surveys (2009, 2013, and 2015) in this military area east of Kodiak (Rone *et al.* 2017). There was one sighting of a single North Pacific right whale during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011). There was another sighting of a lone North Pacific right whale during a marine mammal cruise, approximately 130 miles east of Kodiak Island in July 2012 (Matsuoka *et al.* 2013). Thus, it is possible that a right whale could be seen during the proposed survey.

Gray Whale (*Eschrichtius robustus*)

Two separate populations of gray whales have been recognized in the North Pacific (LeDuc *et al.* 2002): The eastern North Pacific and western North Pacific (or Korean-Okhotsk) stocks. However, the distinction between these two populations has been recently debated owing to evidence that whales from the western feeding area also travel to breeding areas in the eastern North Pacific (Weller *et al.* 2012, 2013; Mate *et al.* 2015). Thus, it is possible that whales from both the endangered Western North Pacific and the delisted Eastern North Pacific distinction population segments (DPSs) could occur in the proposed survey area in the eastern North Pacific.

Gray whale populations were severely reduced by whaling, but the eastern North Pacific population is considered to have recovered. Punt and Wade (2012) estimated the eastern North Pacific population to be at 85 percent of its carrying capacity in 2009. The eastern North Pacific gray whale breeds and winters in Baja, California, and migrates north to summer feeding grounds in the northern Bering Sea, Chukchi Sea, and western Beaufort Sea (Rice and Wolman 1971; Rice 1998; Jefferson *et al.* 2015). Most of the eastern Pacific population makes a round-trip annual migration of more than 18,000 km. From late May to early October, the majority of the population concentrates in the northern and western Bering Sea and in the Chukchi Sea. However, some individuals spend the summer months scattered along the coasts of southeast Alaska, B.C., Washington, Oregon, and northern California (Rice and Wolman 1971; Nerini 1984; Darling *et al.* 1998; Dunham and Duffus 2001, 2002; Calambokidis *et al.* 2002). Gray whales are found primarily in shallow water; most follow the coast during migration, staying close to the shoreline except when crossing major bays, straits, and inlets (Braham 1984).

It is difficult to determine precisely when the southbound migration begins; whales near Barrow were moving predominantly south in August (Maher 1960; Braham 1984). Gray whales leave the Bering Sea through Unimak Pass from late October through January (Braham 1984). From October to January, the main part of the population moves down the west coast of North America. Rugh *et al.* (2001) analyzed data collected from two sites in California to estimate the timing of the gray whale southward migration. They estimated that the median date for the migration past various sites was 1 December in the central Bering Sea (a nominal starting point), 12 December at Unimak Pass, 18 December at Kodiak Island, and 5 January for Washington.

By January and February, most of the whales are concentrated in the lagoons along the Pacific coast of the Baja Peninsula, Mexico. From late February to June, the population migrates northward to arctic and subarctic seas (Rice and Wolman 1971). The peak of northward migration in the GOA occurs in mid-April (Braham 1984). Most gray whales follow the coast during migration and stay within 2 km of the shoreline, except when crossing major bays, straits, and inlets from southeast Alaska to the eastern Bering Sea (Braham 1984). Gray whales use the nearshore areas of the Alaska Peninsula during the spring and fall migrations, and are often found within the bays and lagoons, primarily north of the peninsula, during the summer (Brueggeman *et al.* 1989 in Waite *et al.* 1999). However, gray whales are known to move further offshore between the entrance to Prince William Sound (PWS) and Kodiak Island and between Kodiak Island and the southern part of the Alaska Peninsula (Consiglieri *et al.* 1982). During May–October, primary occurrence extends seaward 28 km from the shoreline. This is the main migratory corridor for gray whales.

In the summer, gray whales are seen in the southeast Bering Sea (Moore *et al.* 2002b) and in the GOA, including around Kodiak Island (*e.g.,* Wade *et al.* 2003; Calambokidis *et al.* 2004; Calambokidis 2007; Moore *et al.* 2007). In fact, gray whales have been seen feeding off southeast Kodiak Island, in particular near Ugak Bay, year-round (Moore *et al.* 2007). Moore *et al.* (2007) noted monthly sighting rates that exceeded 100 sightings/h in January, June, September, and November, and >20 sightings/h in most other months. One feeding aggregation in July consisted of 350–400 animals, clustered in groups of 10–20 animals, from the mouth of Ugak Bay to 100 km ESE of Ugak Island (Moore *et al.* 2007). Wade *et al.* (2003) reported a group size of 5.6 in the western GOA. A biologically important area (BIA) for feeding for gray whales has been identified in the waters east of the Kodiak Archipelago, with the greatest densities of gray whales occurring from June through August (Ferguson *et al.* 2015). Additionally, a gray whale migratory corridor BIA has been established extending from Unimak Pass in the western GOA to the Canadian border in the eastern GOA (Ferguson *et al.* 2015), including much of the landward side of the survey area. Gray whales occur in this area in high densities during November through January (southbound) and March through May (northbound).

Rone *et al.* (2017) sighted gray whales off Ugak Island, Kodiak, in all three years (2009, 2013, and 2015) of surveys in the military training area east of Kodiak. Gray whales were detected acoustically throughout the summer and fall at fixed hydrophones on the shelf off Kenai Peninsula and near Kodiak Island in this military training area in a 2014–2015 study (Rice *et al.* 2015), but they were not detected at deeper slope or seamount sites and they were detected only once in prior years of study from 2011 to 2013 (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013). Gray whales were neither observed visually nor detected acoustically during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011). Gray whales could be encountered during the proposed seismic survey in the GOA.

Humpback Whale (*Megaptera novaeangliae*)

The humpback whale is found throughout all oceans of the World (Clapham 2009), with recent genetic evidence suggesting three separate subspecies: North Pacific, North Atlantic, and Southern Hemisphere

(Jackson *et al.* 2014). Nonetheless, genetic analyses suggest some gene flow (either past or present) between the North and South Pacific (*e.g.,* Jackson *et al.* 2014; Bettridge *et al.* 2015). Although considered to be mainly a coastal species, the humpback whale often traverses deep pelagic areas while migrating (*e.g.,* Mate *et al.* 1999; Garrigue *et al.* 2015).

North Pacific humpback whales migrate between summer feeding grounds along the Pacific Rim and the Bering and Okhotsk seas and winter calving and breeding areas in subtropical and tropical waters (Pike and MacAskie 1969; Rice 1978; Winn and Reichley 1985; Calambokidis *et al.* 2000, 2001, 2008). In the North Pacific, humpbacks winter in four different breeding areas: (1) Along the coast of Mexico; (2) along the coast of Central America; (3) around the Main Hawaiian Islands; and (4) in the western Pacific, particularly around the Ogasawara and Ryukyu islands in southern Japan and the northern Philippines (Calambokidis *et al.* 2008; Fleming and Jackson 2011; Bettridge *et al.* 2015). These breeding areas are recognized as the Mexico, Central America, Hawaii, and Western Pacific DPSs (NMFS 2016b). Hawaii is the primary wintering area for whales from summer feeding areas in the Gulf of Alaska (Calambokidis *et al.* 2008). Individuals from the Hawaii, Western Pacific, and Mexico DPSs could occur in the proposed survey area to feed. The Hawaii DPS is not listed and the Mexico DPS is listed as threatened under the ESA. Additionally, the Western North Pacific stock, analogous to the western Pacific DPS, is listed as endangered under the ESA.

There is potential for mixing of the western and eastern North Pacific humpback populations on their summer feeding grounds, and several sources suggest that this occurs to a limited extent (Muto *et al.* 2018). NMFS is currently reviewing the global humpback whale stock structure in light of the recent revision to their ESA listing and identification of 14 DPSs (81 FR 62259; 8 September 2016). Currently, two stocks of humpback whales are recognized as occurring in Alaskan waters. The Central North Pacific Stock occurs from southeast Alaska to the Alaska Peninsula and the Western North Pacific Stock occurs from the Aleutians to the Bering Sea and Russia. These two stocks overlap on feeding grounds in the eastern Bering Sea and the western Gulf of Alaska (Muto *et al.* 2018), encompassing the entire proposed survey area. BIAs for humpback whale feeding have been designated surrounding Kodiak Island and the Shumagin Islands (Ferguson *et al.* 2015). The highest densities of humpback whales occur during July through September around Kodiak Island and during July through August in the Shumagin Islands.

Humpback whales are commonly sighted within the proposed survey area. Waite (2003) reported that 117 humpbacks were seen in 41 groups during their surveys in the western GOA in 2003, with aggregations seen off northeast Kodiak Island. During summer surveys from the Kenai Fjords to the central Aleutian Islands in 2001–2003, humpbacks were most abundant near Kodiak Island, the Shumagin Islands, and north of Unimak Pass (Zerbini *et al.* 2006). Sightings of humpbacks around the Kodiak Islands were made most frequently in the fall, and aggregations were seen off Shuyak and Sitkalidak islands (Wynne and Witteveen 2005), as well as in Marmot and Chiniak bays (Baraff *et al.* 2005). Waite *et al.* (1999) noted another aggregation area north of Unalaska Island. Offshore sightings of humpbacks have also been made south of the Alaska Peninsula, including ~280 km south of the Shumagin Islands (*e.g.,* Forney and Brownell 1996; Waite *et al.* 1999). Humpback whales were sighted a total of 220 times (637 animals) during the three years of surveys (2009, 2013, and 2015) in and near the U.S. Navy training area east of Kodiak (Rone *et al.* 2017). Humpback whales were also frequently detected acoustically during all years (2011–2015) of fixed-PAM studies in this area, with peak detections during late fall through early winter and detections at all shelf, slope, and seamount sites (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). Humpback whales were the most frequently sighted cetacean during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey, comprising 50 percent of all cetacean sightings (RPS 2011). There were 92 sightings of this species, representing 288 animals during the 37 days of monitoring. The average group size was three and the maximum group size was 37. This species is likely to be common in the proposed survey area.

Calambokidis *et al.* (2008) reported an abundance estimate of 3,000–5,000 for the GOA. Rone *et al.* (2017) calculated an abundance estimate of 2,215 (uncorrected for missed animals) from a June–July 2013 survey in the U.S. Navy training area east of Kodiak Island, with the bulk of this estimate (2,927) found in the inshore stratum. NMFS provides best estimates of 1,107 for the Western North Pacific Stock and 10,103 for the Central North Pacific Stock (Muto *et al.* 2018). Within the Central North Pacific stock, the Hawaii DPS is estimated to contain 11,398 animals where the Mexico DPS is estimated to contain 3,264 animals (81 FR 62259; effective October 11, 2016).

Minke Whale (*Balaenoptera acutorostrata*)

The minke whale has a cosmopolitan distribution ranging from the tropics and subtropics to the ice edge in both hemispheres (Jefferson *et al.* 2015). In the Northern Hemisphere, minke whales are usually seen in coastal areas, but can also be seen in pelagic waters during northward migrations in spring and summer, and southward migration in autumn (Stewart and Leatherwood 1985). In the North Pacific, the summer range extends to the Chukchi Sea; in the winter, minke whales move further south to within 2° of the Equator (Perrin and Brownell 2009). The International Whaling Commission (IWC) recognizes three stocks in the North Pacific: The Sea of Japan/East China Sea, the rest of the western Pacific west of 180°N, and the remainder of the Pacific (Donovan 1991). NMFS recognizes a single stock in Alaskan waters and a second California/Oregon/Washington Stock (Muto *et al.* 2016).

The minke whale tends to be solitary or in groups of 2–3 but can occur in much larger aggregations around prey resources (Jefferson *et al.* 2008). Predominantly solitary animals were seen during surveys in Alaska (Wade *et al.* 2003; Waite 2003; Zerbini *et al.* 2006). The small size, inconspicuous blows, and brief surfacing times of minke whales mean that they are easily overlooked in heavy sea states, although they are known to approach vessels in some circumstances (Stewart and Leatherwood 1985). Little is known about the diving behavior of minke whales, but they are not known to make prolonged deep dives (Leatherwood and Reeves 1983).

Minke whales are relatively common in the Bering and Chukchi seas and in the inshore waters of the GOA (Mizroch 1992), but they are not considered abundant in any other part of the eastern Pacific (Brueggeman *et al.* 1990). Waite (2003) sighted four minke whales in three groups during surveys in the western GOA in 2003, south of the Kenai Peninsula and south of PWS. Moore *et al.* (2002b) reported a minke whale sighting south of the Sanak Islands. Baraff *et al.* (2005) reported a single sighting near Kodiak Island in July 2002. During surveys in the western GOA and eastern Aleutians, minke whales occurred primarily in the Aleutians; a few sightings were made

south of the Alaska Peninsula and near Kodiak Island (Zerbini *et al.* 2006). Rone *et al.* (2017) reported two sightings totaling three minke whales in 2009, three sightings totaling six minke whales in 2013, and no sightings of minke whales in 2015 in the U.S. Navy training area east of Kodiak. Minke whales were not detected acoustically during any year (2011–2015) of the fixed-PAM studies in the Department of the Navy (DoN) area east of Kodiak (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). There was one sighting of a single minke whale during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Sei Whale (*Balaenoptera borealis*)

The sei whale occurs in all ocean basins (Horwood 2009) but appears to prefer mid-latitude temperate waters (Jefferson *et al.* 2015). It undertakes seasonal migrations to feed in subpolar latitudes during summer and returns to lower latitudes during winter to calve (Horwood 2009). The sei whale is pelagic and generally not found in coastal waters (Harwood and Wilson 2001). It occurs in deeper waters characteristic of the continental shelf edge region (Hain *et al.* 1985) and in other regions of steep bathymetric relief such as seamounts and canyons (Kenney and Winn 1987; Gregr and Trites 2001). On feeding grounds, sei whales associate with oceanic frontal systems (Horwood 1987) such as the cold eastern currents in the North Pacific (Perry *et al.* 1999). Sei whales are frequently seen in groups of 2–5 (Jefferson *et al.* 2008), although larger groups sometimes form on feeding grounds (Gambell 1985a).

In the U.S. Pacific, an Eastern North Pacific and a Hawaii stock are recognized (Carretta *et al.* 2017). During summer in the North Pacific, the sei whale can be found from the Bering Sea to the northern GOA and south to California, and in the western Pacific from Japan to Korea. Its winter distribution is concentrated at about 20° N, and sightings have been made between southern Baja California and the Islas Revilla Gigedo (Rice 1998). No breeding grounds have been identified for sei whales; however, calving is thought to occur from September to March.

Moore *et al.* (2002b) made four sightings of six sei whales during summer surveys in the eastern Bering Sea, and one sighting south of the Alaska Peninsula between Kodiak and the Shumagin Islands. No sei whales were seen during surveys of the GOA by Wade *et al.* (2003), Waite (2003), or Zerbini *et al.* (2006). Rone *et al.* (2017) reported no sei whale sightings in 2009 or 2013 and a single sei whale sighting of one animal in 2015 in the U.S. Navy training area east of Kodiak. There was one sighting of two sei whales during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011). During a 2012 survey in summer and early fall, Matsuoka *et al.* (2013) reported 87 sei whale sightings of 1,647 individuals, however the majority of these sightings were far south of the action area. Sei whale sightings are likely to be uncommon in the proposed survey area.

Fin Whale (*Balaenoptera physalus*)

The fin whale is widely distributed in all the World's oceans (Gambell 1985b), although it is most abundant in temperate and cold waters (Aguilar 2009). Nonetheless, its overall range and distribution are not well known (Jefferson *et al.* 2015). A recent review of fin whale distribution in the North Pacific noted the lack of sightings across the pelagic waters between eastern and western winter areas (Mizroch *et al.* 2009). The fin whale most commonly occurs offshore but can also be found in coastal areas (Aguilar 2009). Most populations migrate seasonally between temperate waters where mating and calving occur in winter, and polar waters where feeding occurs in summer (Aguilar 2009). However, recent evidence suggests that some animals may remain at high latitudes in winter or low latitudes in summer (Edwards *et al.* 2015).

The fin whale is known to use the shelf edge as a migration route (Evans 1987). Sergeant (1977) suggested that fin whales tend to follow steep slope contours, either because they detect them readily, or because the contours are areas of high biological productivity. However, fin whale movements have been reported to be complex (Jefferson *et al.* 2015). Stafford *et al.* (2009) noted that sea-surface temperature is a good predictor variable for fin whale call detections in the North Pacific.

North Pacific fin whales summer from the Chukchi Sea to California and winter from California southwards (Gambell 1985b). In the United States, three stocks are recognized in the North Pacific: California/Oregon/Washington, Hawaii, and Alaska (Northeast Pacific) (Carretta *et al.* 2017). Information about the seasonal distribution of fin whales in the North Pacific has been obtained from the detection of fin whale calls by bottom-mounted, offshore hydrophone arrays along the U.S. Pacific coast, in the central North Pacific, and in the western Aleutian Islands (Moore *et al.* 1998, 2006; Watkins *et al.* 2000a,b; Stafford *et al.* 2007, 2009). Fin whale calls are recorded in the North Pacific year-round, including the GOA (*e.g.,* Moore *et al.* 2006; Stafford *et al.* 2007, 2009; Edwards *et al.* 2015). Near the Alaska Peninsula in the western GOA, the number of calls received peaked in May–August, with few calls during the rest of the year (Moore *et al.* 1998). In the central North Pacific, the GOA, and the Aleutian Islands, call rates peak during fall and winter (Moore *et al.* 1998, 2006; Watkins *et al.* 2000a,b; Stafford *et al.* 2009).

Rice and Wolman (1982) encountered 19 fin whales during surveys in the GOA, including 10 aggregated near Middleton Island on 1 July 1980. During surveys from the Kenai Peninsula to the central Aleutian Islands, fin whales were most abundant near the Semidi Islands and Kodiak Island (Zerbini *et al.* 2006). Numerous sightings of fin whales were also seen between the Semidi Islands and Kodiak Island during surveys by Waite (2003). Fin whale sightings around Kodiak Island were most numerous along the western part of the island in Uyak Bay and Kupreanof Straits, and in Marmot Bay (Wynne and Witteveen 2005; Baraff *et al.* 2005). Fin whales were sighted around Kodiak Island year-round, but most sightings were made in the spring and summer (Wynne and Witteveeen 2005). A BIA for fin whale feeding has been designated southward from the Kenai Peninsula inshore of the Kodiak Archipelago and along the Alaska Peninsula to include the Semidi Islands (Ferguson *et al.* 2015), overlapping with a proportion of the proposed survey area. Densities of fin whales are highest in this area during June through August.

Rone *et al.* (2017) reported 24 fin whale sightings (64 animals) in 2009, two hundred fin whale sightings (392 animals) in 2013, and 48 fin whale sightings (69 animals) in 2015 in the U.S. Navy training area east of Kodiak. That study also provided an abundance estimate of 3168 for this area. The density and abundance estimates were not corrected for missed animals. Fin whales were also frequently detected acoustically throughout the year during all years (2011–2015) of fixed-PAM studies in this area and detections occurred at all shelf, slope, and seamount sites (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). Fin whales were the second most frequently sighted cetacean during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey, comprising

15.2 percent of all cetacean sightings (RPS 2011). There were 28 sightings of this species, representing 79 animals during the 37 days of monitoring. The average group size was three and the maximum group size was 10. Fin whales are likely to be common in the proposed survey area.

Blue Whale (*Balaenoptera musculus*)

The blue whale has a cosmopolitan distribution and tends to be pelagic, only coming nearshore to feed and possibly to breed (Jefferson *et al.* 2015). Blue whale migration is less well defined than for some other rorquals, and their movements tend to be more closely linked to areas of high primary productivity, and hence prey, to meet their high energetic demands (Branch *et al.* 2007). Generally, blue whales are seasonal migrants between high latitudes in the summer, where they feed, and low latitudes in the winter, where they mate and give birth (Lockyer and Brown 1981). Some individuals may stay in low or high latitudes throughout the year (Reilly and Thayer 1990; Watkins *et al.* 2000b).

Although it has been suggested that there are at least five subpopulations in the North Pacific (Reeves *et al.* 1998), analysis of calls monitored from the U.S. Navy Sound Surveillance System (SOSUS) and other offshore hydrophones (*e.g.,* Stafford *et al.* 1999, 2001, 2007; Watkins *et al.* 2000a; Stafford 2003) suggests that there are two separate populations: one in the eastern and one in the central North Pacific (Carretta *et al.* 2017). The Eastern North Pacific Stock includes whales that feed primarily off California from June–November and winter off Central America (Calambokidis *et al.* 1990; Mate *et al.* 1999). The Central North Pacific Stock feeds off Kamchatka, south of the Aleutians and in the Gulf of Alaska during summer (Stafford 2003; Watkins *et al.* 2000b), and migrates to the western and central Pacific (including Hawaii) to breed in winter (Stafford *et al.* 2001; Carretta *et al.* 2017). The status of these two populations could differ substantially, as little is known about the population size in the western North Pacific (Branch *et al.* 2016).

In the North Pacific, blue whale calls are detected year-round (Stafford *et al.* 2001, 2009; Moore *et al.* 2002a, 2006; Monnahan *et al.* 2014). Stafford *et al.* (2009) reported that sea-surface temperature is a good predictor variable for blue whale call detections in the North Pacific. In the GOA, no detections of blue whales had been made since the late 1960s (NOAA 2004b; Calambokidis *et al.* 2009) until blue whale calls were recorded in the area during 1999–2002 (Stafford 2003; Stafford and Moore 2005; Moore *et al.* 2006; Stafford *et al.* 2007). Call types from both northeastern and northwestern Pacific blue whales were recorded from July through December in the GOA, suggesting that two stocks used the area at that time (Stafford 2003; Stafford *et al.* 2007). Call rates peaked from August through November (Moore *et al.* 2006). More recent acoustic studies using fixed PAM have confirmed the presence of blue whales from both the Central and Northeast Pacific stocks in the Gulf of Alaska concurrently (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). Blue whale calls were recorded in all months; at all shelf, slope, and seamount sites; and during all years (2011–2015) of those studies.

In July 2004, three blue whales were sighted in the GOA. The first blue whale was seen on 14 July ~185 km southeast of PWS. Two more blue whales were seen ~275 km southeast of PWS (NOAA 2004b; Calambokidis *et al.* 2009). These whales were thought to be part of the California feeding population (Calambokidis *et al.* 2009). Western blue whales are more likely to occur in the western portion of the GOA, southwest of Kodiak, where their calls have been detected (see Stafford 2003). Two blue whale sightings were also made in the Aleutians in August 2004 (Calambokidis *et al.* 2009). No blue whales were seen during surveys of the western GOA by Zerbini *et al.* (2006).

Rone *et al.* (2017) reported no blue whale sightings in 2009, five blue whale sightings (seven animals) in 2013, and 13 blue whale sightings (13 animals) in 2015 in the U.S. Navy training area east of Kodiak. Blue whales were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Odontocetes

Sperm Whale (*Physeter macrocephalus*)

The sperm whale is the largest of the toothed whales, with an extensive worldwide distribution from the edge of the polar pack ice to the Equator (Whitehead 2009). Sperm whale distribution is linked to its social structure: Mixed groups of adult females and juveniles of both sexes generally occur in tropical and subtropical waters at latitudes less than ~40° (Whitehead 2009). After leaving their female relatives, males gradually move to higher latitudes, with the largest males occurring at the highest latitudes and only returning to tropical and subtropical regions to breed. Sperm whales generally are distributed over large areas that have high secondary productivity and steep underwater topography, in waters at least 1000 m deep (Jaquet and Whitehead 1996). They are often found far from shore but can be found closer to oceanic islands that rise steeply from deep ocean waters (Whitehead 2009).

Most of the information regarding sperm whale distribution in the GOA (especially the eastern GOA) and southeast Alaska has come from observations from fishermen and reports from fisheries observers aboard commercial fishing vessels (*e.g.,* Dahlheim 1988). Fishery observers have identified interactions (*e.g.,* depredation) between longline vessels and sperm whales in the GOA and southeast Alaska since at least the mid-1970s (*e.g.,* Hill *et al.* 1999; Straley *et al.* 2005; Sigler *et al.* 2008), with most interactions occurring in the West Yakutat and East Yakutat/Southeast regions (Perez 2006; Hanselman *et al.* 2008). Sigler *et al.* (2008) noted high depredation rates in West Yakutat, East Yakutat/Southeast region, as well as the central GOA. Hill *et al.* (1999) found that most interactions in the GOA occurred to the east of Kodiak Island, even though there was substantial longline effort in waters to the west of Kodiak. Mellinger *et al.* (2004a) also noted that sperm whales occurred less often west of Kodiak Island.

Sperm whales are commonly sighted during surveys in the Aleutians and the central and western GOA (*e.g.,* Forney and Brownell 1996; Moore 2001; Waite 2003; Wade *et al.* 2003; Zerbini *et al.* 2004; Barlow and Henry 2005; Ireland *et al.* 2005; Straley *et al.* 2005). Waite (2003) and Wade *et al.* (2003) noted an average group size of 1.2 in the western GOA. In contrast, there are fewer reports on the occurrence of sperm whales in the eastern GOA (*e.g.,* Rice and Wolman 1982; Mellinger *et al.* 2004a; MacLean and Koski 2005; Rone *et al.* 2010). Rone *et al.* (2017) reported no sperm whale sightings in 2009, 19 sperm whale sightings (22 animals) in 2013, and 27 sperm whale sightings (45 animals) in 2015 in the U.S. Navy training area east of Kodiak. Additionally, there were 241 acoustic encounters with sperm whales during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). Sperm whales were also frequently detected acoustically throughout the year during all years (2011–2015) of fixed-PAM studies in this area and detections occurred at all shelf, slope, and seamount sites, but they were less common at the shelf site near Kenai Peninsula and most common on the

slope (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015).

Rone *et al.* (2017) provided an abundance estimate (uncorrected for missed animals) for the area of 129 sperm whales, most of which were found in slope waters. Sperm whales were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Cuvier's Beaked Whale (*Ziphius cavirostris*)

Cuvier's beaked whale is the most widespread of the beaked whales, occurring in almost all temperate, subtropical, and tropical waters and even some sub-polar and polar waters (MacLeod *et al.* 2006). It is likely the most abundant of all beaked whales (Heyning and Mead 2009). Cuvier's beaked whale is found in deep water over and near the continental slope (Jefferson *et al.* 2015).

Cuvier's beaked whale ranges north to the GOA, including southeast Alaska, the Aleutian Islands, and the Commander Islands (Rice 1986, 1998). Most reported sightings have been in the Aleutian Islands (*e.g.,* Leatherwood *et al.* 1983; Forney and Brownell 1996; Brueggeman *et al.* 1987). Waite (2003) reported a single sighting of four Cuvier's beaked whales at the shelf break east of Kodiak Island during the summer of 2003 and one stranded on Kodiak Island in January 1987 (Foster and Hare 1990). There was one sighting of a single Cuvier's beaked whale during a 2013 survey in the U.S. Navy training area east of Kodiak, but none during the 2009 and 2015 surveys in that region (Rone *et al.* 2017). There were also five sightings (eight animals) of unidentified beaked whales during the 2013 survey and none during the other years. Additionally, there were 34 acoustic encounters with Cuvier's beaked whales during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). Cuvier's beaked whales were detected occasionally at deep-water sites (900–1,000 m) during the 2011–2015 fixed-PAM studies in the U.S. Navy training area. They were infrequently detected on the slope site but more commonly detected at Pratt and Quinn seamounts. Detections occurred May to July 2014 at Pratt Seamount and October 2014 to March 2015 at Quinn Seamount in one of those studies (Rice *et al.* 2015). Beaked whales were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Stejneger's Beaked Whale (*Mesoplodon stejnegeri*)

Stejneger's beaked whale occurs in subarctic and cool temperate waters of the North Pacific (Mead 1989). Most records are from Alaskan waters, and the Aleutian Islands appear to be its center of distribution (Mead 1989; Wade *et al.* 2003). There have been no confirmed sightings of Stejneger's beaked whale in the GOA since 1986 (Wade *et al.* 2003). However, they have been detected acoustically in the Aleutian Islands during summer, fall, and winter (Baumann-Pickering *et al.* 2014) and were detected year-round at deep-water sites during the 2011–2015 fixed-PAM studies in the U.S. Navy training area east of Kodiak (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). In contrast to Cuvier's beaked whales, which were more prevalent at seamounts, Stejneger's beaked whales were detected most frequently at the slope site, with peak detections in September and October (Debich *et al.* 2013; Rice *et al.* 2015). There were no sightings of Stejneger's beaked whales during three years of surveys (2009, 2013, 2015) in this area (Rone *et al.* 2017). However, there were five sightings (eight animals) of unidentified beaked whales during the 2013 survey. Additionally, there were six acoustic encounters with Stejneger's beaked whales during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). Beaked whales were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Baird's Beaked Whale (*Berardius bairdii*)

Baird's beaked whale has a fairly extensive range across the North Pacific north of 30° N, and strandings have occurred as far north as the Pribilof Islands (Rice 1986). Two forms of Baird's beaked whales have been recognized—the common slate-gray form and a smaller, rare black form (Morin *et al.* 2017). The gray form is seen off Japan, in the Aleutians, and on the west coast of North America, whereas the black from has been reported for northern Japan and the Aleutians (Morin *et al.* 2017). Recent genetic studies suggest that the black form could be a separate species (Morin *et al.* 2017).

Baird's beaked whale is currently divided into three distinct stocks: Sea of Japan, Okhotsk Sea, and Bering Sea/eastern North Pacific (Balcomb 1989; Reyes 1991). Baird's beaked whales sometimes are seen close to shore, but their primary habitat is over or near the continental slope and oceanic seamounts in waters 1,000–3,000 m deep (Jefferson *et al.* 1993; Kasuya and Ohsumi 1984; Kasuya 2009).

Baird's beaked whale is migratory, arriving in the Bering Sea in the spring, and remaining there throughout the summer; the winter distribution is unknown (Kasuya 2002). There are numerous sighting records from the central GOA to the Aleutian Islands and the southern Bering Sea (Leatherwood *et al.* 1983; Kasuya and Ohsumi 1984; Forney and Brownell 1996; Brueggeman *et al.* 1987; Moore *et al.* 2002b; Waite 2003; Wade *et al.* 2003). There were seven sightings of Baird's beaked whales (58 animals) during a 2013 survey in the U.S. Navy training area east of Kodiak (Rone *et al.* 2017). Additionally, there were nine acoustic encounters with Baird's beaked whales during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). There were also five sightings (eight animals) of unidentified beaked whales during that survey. No beaked whales were observed in 2009 or 2015 surveys in the same area (Rone *et al.* 2017). Baird's beaked whales were detected acoustically during fixed-PAM studies in this area during the 2011–2012 and 2012–2013 studies but not in 2014–2015 (Baumann-Pickering *et al.* 2012; Debich *et al.* 2013; Rice *et al.* 2015). They were detected regularly at the slope site from November through and January and at the Pratt Seamount site during most months. Beaked whales were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Pacific White-Sided Dolphin (*Lagenorhynchus obliquidens*)

The Pacific white-sided dolphin is found throughout the temperate North Pacific, in a relatively narrow distribution between 38° N and 47° N (Brownell *et al.* 1999). It is common both on the high seas and along the continental margins (Leatherwood *et al.* 1984; Dahlheim and Towell 1994; Ferrero and Walker 1996). Pacific white-sided dolphins often associate with other species, including cetaceans (especially Risso's and northern right whale dolphins; Green *et al.* 1993), pinnipeds, and seabirds.

Pacific white-sided dolphins were seen throughout the North Pacific during surveys conducted during 1983–1990 (Buckland *et al.* 1993; Miyashita 1993b). During winter, this species is most abundant in California slope and offshore areas; as northern marine waters begin to warm in the spring, it appears to move north to slope and

offshore waters off Oregon/Washington (Green *et al.* 1992, 1993; Forney 1994; Forney *et al.* 1995; Buchanan *et al.* 2001; Barlow 2003). During the summer, Pacific white-sided dolphins occur north into the GOA and west to Amchitka in the Aleutian Islands, but rarely in the southern Bering Sea (Allen and Angliss 2010). Moore *et al.* (2002b) documented a single sighting of eight Pacific white-sided dolphins in the southeast Bering Sea along the Alaska Peninsula. Sightings in the GOA and Aleutian Islands have been documented in the summer by Waite (2003) and Wade *et al.* (2003), and in the spring to the southeast of Kodiak Island by Rone *et al.* (2010). Dahlheim and Towell (1994) reported sightings for southeast Alaska. There was one sighting of 60 Pacific white-sided dolphins in 2009, no sightings in 2013, and 10 sightings of Pacific white-sided dolphins (986 animals) in 2015 during surveys in the U.S. Navy training area east of Kodiak (Rone *et al.* 2017). Pacific white-sided dolphins were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011), but there was one sighting of two unidentified small odontocetes.

Risso's Dolphin (*Grampus griseus*)

Risso's dolphin is primarily a tropical and mid-temperate species distributed worldwide (Kruse *et al.* 1999). It occurs between 60° N and 60° S, where surface water temperatures are at least 10° C (Kruse *et al.* 1999). Water temperature appears to be an important factor affecting its distribution (Kruse *et al.* 1999). Although it occurs from coastal to deep water, it shows a strong preference for mid-temperate waters of the continental shelf and slope (Jefferson *et al.* 2014).

Throughout the region from California to Washington, the distribution and abundance of Risso's dolphins are highly variable, presumably in response to changing oceanographic conditions on both annual and seasonal time scales (Forney and Barlow 1998; Buchanan *et al.* 2001; Becker 2007). Water temperature appears to be an important factor affecting their distribution (Kruse *et al.* 1999; see also Becker 2007). Like the Pacific white-sided dolphin, Risso's dolphin is believed to make seasonal north-south movements related to water temperature, spending colder winter months off California and moving north to waters off Oregon/Washington during the spring and summer as northern waters begin to warm (Green *et al.* 1992, 1993; Buchanan *et al.* 2001; Barlow 2003; Becker 2007). Risso's dolphins are uncommon to rare in the GOA. Risso's dolphins have been sighted near Chirikof Island (southwest of Kodiak Island) and offshore in the GOA (Consiglieri *et al.* 1980; Braham 1983). They were detected acoustically once, in January 2013, near Pratt Seamount during fixed-PAM studies from 2011–2015 in the U.S. Navy training area (Debich *et al.* 2013). The DoN (2014) considers this species to be only an occasional visitor to their GOA training area. Risso's dolphins were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011). There was one sighting of two unidentified small odontocetes.

Killer Whale (*Orcinus orca*)

The killer whale is cosmopolitan and globally fairly abundant; it has been observed in all oceans of the World (Ford 2009). It is very common in temperate waters and also frequents tropical waters, at least seasonally (Heyning and Dahlheim 1988). High densities of the species occur in high latitudes, especially in areas where prey is abundant. Killer whale movements generally appear to follow the distribution of their prey, which includes marine mammals, fish, and squid.

Of eight killer whale stocks currently recognized in the Pacific U.S., six occur in Alaskan waters: (1) The Eastern North Pacific Alaska Resident Stock, from southeast Alaska to the Aleutians and Bering Sea, (2) the Eastern North Pacific Northern Resident Stock, from B.C. through parts of southeast Alaska, (3) the Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock, from PWS through to the Aleutians and Bering Sea, (4) the AT1 Transient Stock, from PWS through the Kenai Fjords, (5) the West Coast Transient Stock, from California through southeast Alaska, and (6) the Offshore Stock, from California through Alaska. The AT1 Transient Stock is considered depleted under the MMPA and therefore a strategic stock. Movements of resident groups between different geographic areas have also been documented (Leatherwood *et al.* 1990; Dahlheim *et al.* 1997; Matkin *et al.* 1997, 1999 in Allen and Angliss 2010). In the proposed study area, individuals from one resident stock (Eastern North Pacific Alaska Resident Stock), the North Pacific Offshore Stock, and one transient stock (Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock), could be encountered during the survey. AT1 transients have only ever been seen in Prince William Sound and in the Kenai Fjords region (Muto et al., 2018; Matkin et al 2008). Therefore, while the stock is present in the Gulf of Alaska, the limited range of the stock and the fact that this range does not overlap with L–DEO's proposed survey means take is not likely to occur for the AT1 stock of transient killer whales.

During surveys of the western GOA and Aleutian Islands, transient killer whale densities were higher south of the Alaska Peninsula between the Shumagin Islands and the eastern Aleutians than in other areas (Wade *et al.* 2003; Zerbini *et al.* 2007). They were not seen between the Shumagin Islands and the eastern side of Kodiak Island during surveys in 2001–2003, but they were sighted there during earlier surveys (*e.g.,* Dahlheim 1997 in Zerbini *et al.* 2007). Resident killer whales were most abundant near Kodiak Island, around Umnak and Unalaska Islands in the eastern Aleutians, and in Seguam Pass in the central Aleutians (Wade *et al.* 2003; Zerbini *et al.* 2007). No residents were seen between 156° W and 164° W, south of the Alaska Peninsula (Zerbini *et al.* 2007).

Little is known about offshore killer whales in the GOA, but they could be encountered during the proposed survey. During summer surveys of the western GOA and Aleutian Islands in 2001–2003, two sightings of offshore killer whales were made, one northeast of Unalaska Island and another one south of Kodiak Island near the Trinity Islands (Wade *et al.* 2003; Zerbini *et al.* 2007). As the groups sighted were large, it suggests the number of offshore killer whales in the area is relatively high (Zerbini *et al.* 2007). Dahlheim *et al.* (2008b) encountered groups of 20–60 killer whales in western Alaska; offshore killer whales encountered near Kodiak Island and the eastern Aleutians were also sighted in southeast Alaska and California. A group of at least 54 offshore killer whales was sighted in July 2003 during a survey in the eastern Aleutian Islands (Matkin *et al.* 2007).

Rone *et al.* (2017) reported six killer whale sightings (119 animals) in 2009, 21 killer whale sightings (138 animals) in 2013, and 10 killer whale sightings (73 animals) in 2015 in the U.S. Navy training area east of Kodiak. Additionally, there were 32 acoustic encounters with killer whales and three acoustic encounters with offshore killer whales (based on known differences in their acoustic signals) during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). Killer whales were detected acoustically sporadiacally throughout the year at shelf, slope, and seamount sites in the U.S. Navy training area (Baumann-Pickering *et al.* 2012;

Debich *et al.* 2013). Rone *et al.* (2017) an abundance estimate (uncorrected for missed animals) for the area of 899 killer whales, most of which were found in slope waters. There was one sighting of a single killer whale during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Dall's Porpoise (*Phocoenoides dalli*)

Dall's porpoise is only found in the North Pacific and adjacent seas. It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (>2,500 m) oceanic waters (Hall 1979), ranging from ~30–62° N (Jefferson *et al.* 2015). In general, this species is common throughout its range (Buckland *et al.* 1993). It is known to approach vessels to bowride (Jefferson 2009).

Dall's porpoise occurs throughout Alaska; the only apparent gaps in distribution in Alaskan waters south of the Bering Strait are for upper Cook Inlet and the Bering Sea shelf. Using a population estimate based on vessel surveys during 1987–1991, and correcting for the tendency of this species to approach vessels, which Turnock and Quinn (1991) suggested resulted in inflated abundance estimates perhaps by as much as five times, a population estimate of 83,400 was calculated for the Alaska stock of Dall's porpoise. Because this estimate is more than eight years old, NMFS considers it to be unreliable and reported that there are no reliable abundance estimates available for the Alaska Stock of this species when it was last reviewed (Muto *et al.* 2016).

Numerous studies have documented the occurrence of Dall's porpoise in the Aleutian Islands and western GOA (Forney and Brownell 1996; Moore 2001; Wade *et al.* 2003; Waite 2003; Baraff *et al.* 2005; Ireland *et al.* 2005) as well as in the Bering Sea (Moore *et al.* 2002b). Dall's porpoise was one of the most frequently sighted species during summer seismic surveys in the central and eastern GOA and southeast Alaska (MacLean and Koski 2005; Hauser and Holst 2009). Rone *et al.* (2017) reported 10 Dall's porpoise sightings (59 animals) in 2009, 337 Dall's porpoise sightings (907 animals) in 2013, and 98 Dall's porpoise sightings (391 animals) in 2015 in the U.S. Navy training area east of Kodiak. Additionally, there were three acoustic encounters with Dall's porpoise during the 2013 towed-hydrophone survey in that study (Rone *et al.* 2014). Rone *et al.* (2017) provided an abundance estimate for the area of 15,423 Dall's porpoises. This estimate was uncorrected for missed animals and did not account for their propensity to approach vessels. Dall's porpoise was the second most frequently sighted cetacean during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey, comprising 14.1 percent of all cetacean sightings (RPS 2011). There were 26 sightings of this species, representing 227 animals during the 37 days of monitoring. The average group size was nine and the largest group size was 35.

Harbor Porpoise (*Phocoena phocoena*)

The harbor porpoise inhabits temperate, subarctic, and arctic waters. It is typically found in shallow water (<100 m) nearshore but is occasionally sighted in deeper offshore water (Jefferson *et al.* 2015); abundance declines linearly as depth increases (Barlow 1988). In the eastern North Pacific, its range extends from Point Barrow, Alaska, to Point Conception, California.

In Alaska, there are three separate stocks of harbor porpoise: Southeast Alaska, GOA, and Bering Sea. The Southeast Alaska Stock occurs from northern B.C. to Cape Suckling, and the GOA Stock ranges from Cape Suckling to Unimak Pass. The population estimates for the Southeast Alaska, GOA, and Bering Sea stocks are 11,146, 31,046, and 48,215, respectively (Muto *et al.* 2016). The Southeast Alaska stock is

Harbor porpoise are seen regularly in the western GOA and Aleutian Islands (*e.g.,* Wade *et al.* 2003; Waite 2003; Baraff *et al.* 2005; Ireland *et al.* 2005) and Bering Sea (Moore *et al.* 2002b). Harbor porpoises are also sighted in the eastern and central GOA and southeast Alaska (Dahlheim *et al.* 2000, 2008a; MacLean and Koski 2005; Rone *et al.* 2010). There were 30 sightings (89 animals) of harbor porpoise in 2009, eight sightings (11 animals) of harbor porposie in 2013, and a single sighting of one harbor porpoise in 2015 during surveys in the U.S. Navy training area east of Kodiak (Rone *et al.* 2017). Harbor porpoise were not observed during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011), but there was one sighting of two unidentified small odontocetes.

Pinnipeds

Northern Fur Seal (*Callorhinus ursinus*)

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Okhotsk Sea, and Honshu Island, Japan (Muto *et al.* 2018). During the breeding season, most of the worldwide population of northern fur seals inhabits the Pribilof Islands in the southern Bering Sea (Lee *et al.* 2014; Muto *et al.* 2018). The rest of the population occurs at rookeries on Bogoslof Island in the Bering Sea, in Russia (Commander Islands, Robben Island, Kuril Islands), on San Miguel Island in southern California (NMFS 1993; Lee *et al.* 2014), and on the Farallon Islands off central California (Muto *et al.* 2018). In the United States, two stocks are recognized—the Eastern Pacific and the California stocks (Muto *et al.* 2018). The Eastern Pacific stock ranges from the Pribilof Islands and Bogoslof Island in the Bering Sea during summer to California during winter (Muto *et al.* 2018).

When not on rookery islands, northern fur seals are primarily pelagic but occasionally haul out on rocky shorelines (Muto *et al.* 2018). During the breeding season, adult males usually come ashore in May–August and may sometimes be present until November; adult females are found ashore from June–November (Carretta *et al.* 2017; Muto *et al.* 2018). After reproduction, northern fur seals spend the next 7–8 months feeding at sea (Roppel 1984). Once weaned, juveniles spend 2–3 years at sea before returning to rookeries. Animals may migrate to the GOA, off Japan, and the west coast of the United States (Muto *et al.* 2018). Pups travel through Aleutian passes and spend the first two years at sea before returning to their islands of origin.

In November, adult females and pups leave the Pribilof Islands and migrate into the North Pacific Ocean to areas including offshore Oregon and Washington (Ream *et al.* 2005). Males usually migrate only as far south as the GOA (Kajimura 1984). Ream *et al.* (2005) showed that migrating females moved over the continental shelf as they migrated southeasterly. Instead of following depth contours, their travel corresponded with movements of the Alaska Gyre and the North Pacific Current (Ream *et al.* 2005). Their foraging areas were associated with eddies, the subarctic-subtropical transition region, and coastal mixing (Ream *et al.* 2005; Alford *et al.* 2005). Some juveniles and non-pregnant females may remain in the GOA throughout the summer (Calkins 1986).

Robson *et al.* (2004) reported that female fur seals from St. Paul and St. George islands traveled in different directions. They also observed habitat separation among breeding sites on the same island (Robson *et al.* 2004). Lactating females from the same breeding site share a foraging area,

whereas females from different sites tend to forage in different areas (Robson *et al.* 2004). Females from both islands traveled for similar durations and maximum distances (Robson *et al.* 2004).

Northern fur seals were seen throughout the North Pacific during surveys conducted during 1987–1990 (Buckland *et al.* 1993). Tracked adult male fur seals that were tagged on St. Paul Island in the Bering Sea in October 2009, wintered in the Bering Sea or northern North Pacific Ocean; females migrated to the GOA and the California Current (Sterling *et al.* 2014).

A total of 42 northern fur seals was seen during 3767 km of shipboard surveys in the northwestern GOA during June–July 1987 (Brueggeman *et al.* 1988). Leatherwood *et al.* (1983) reported 14 sightings of 34 northern fur seals away from the breeding islands in the southeast Bering Sea during aerial surveys in 1982, mostly during July and August. No fur seals were seen during summer surveys in the GOA in 2004 and 2008 (MacLean and Koski 2005; Hauser and Holst 2009) or during spring surveys in 2009 (Rone *et al.* 2010). None of the 42 female northern fur seals tagged on St Paul Island between August–October 2007 and 2008 traveled south of the Aleutian Islands (Kuhn *et al.* 2010). Rone *et al.* (2014) reported 78 northern fur seal sightings (83 animals) in 2013 in the U.S. Navy training area east of Kodiak. They also provided an abundance estimate (uncorrected for missed animals) for the area of 1770 northern fur seals. There were seven sightings, representing 7 northern fur seals, during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Steller Sea Lion (*Eumetopias jubatus*)

The Steller sea lion occurs along the North Pacific Rim from northern Japan to California (Loughlin *et al.* 1984). They are distributed around the coasts to the outer shelf from northern Japan through the Kuril Islands and Okhotsk Sea, through the Aleutian Islands, central Bering Sea, southern Alaska, and south to California (NMFS 2016c). There are two stocks, or DPSs, of Steller sea lions—the Western and Eastern DPSs, which are divided at 144° W longitude (NMFS 2016c). The Western DPS is listed as endangered and includes animals that occur in Japan and Russia (NMFS 2016c; Muto *et al.* 2017); the Eastern DPS was delisted from threatened in 2013 (NMFS 2013a). Critical habitat has been designated 20 nmi around all major haulouts and rookeries, as well as three large foraging areas (NMFS 2017b). The critical habitat of both stocks is currently under review in light of the delisting of the Eastern DPS (Muto *et al.* 2018). Critical habitat as well as ''no approach'' zones occur within the proposed study area. ''No approach'' zones are restricted areas wherein no vessel may approach within 3 nmi (5.6 km) of listed rookeries (50 CFR 223.202). Only individuals from the Western DPS are expected to occur in the proposed survey area. The Eastern DPS is estimated at 41,638 (Muto *et al.* 2017) and appears to have increased at an annual rate of 4.76 percent between 1989 and 2015 (Muto *et al.* 2018).

Rookeries of Steller sea lions from the Western DPS are located on the Aleutian Islands and along the Gulf of Alaska, as well as the east coast of Kamchatka, Commander Islands, and Kuril Islands (Burkanov and Loughlin 2005; Fritz *et al.* 2016; Muto *et al.* 2017). Breeding adults occupy rookeries from late-May to early-July (NMFS 2008). Non-breeding adults use haulouts or occupy sites at the periphery of rookeries during the breeding season (NMFS 2008). Pupping occurs from mid-May to mid July (Pitcher and Calkins 1981) and peaks in June (Pitcher *et al.* 2002). Territorial males fast and remain on land during the breeding season (NMFS 2008). Females with pups generally stay within 30 km of the rookeries in shallow (30–120 m) water when feeding (NMFS 2008). Tagged juvenile sea lions showed localized movements near shore (Briggs *et al.* 2005). Loughlin *et al.* (2003) reported that most (88 percent) at-sea movements of juvenile Steller sea lions in the Aleutian Islands were short (<15 km) foraging trips. The mean distance of juvenile sea lion trips at sea was 16.6 km and the maximum trip distance recorded was 447 km. Long-range trips represented 6 percent of all trips at sea, and trip distance and duration increase with age (Loughlin *et al.* 2003; Call *et al.* 2007). Although Steller sea lions are not considered migratory, foraging animals can travel long distances outside of the breeding season (Loughlin *et al.* 2003; Raum-Suryan *et al.* 2002).

Steller sea lions are present in Alaska year-round, with centers of abundance in the GOA and Aleutian Islands. There are five major rookery sites within the study area in the northern GOA: Chirikof, Chowiet, Atkins, Chernabura islands, and Pinnacle Rock. There are also numerous haulout sites located within the study area (see Figure 1 in the IHA Application); most haulout sites on Kodiak Island (and within the study area) are used year-round (*e.g.,* Wynne 2005). Counts are highest in late summer (Wynne 2005). Sea lion counts in the central GOA, including Kodiak Island, were reported to be declining between 1999 and 2003 (Sease and Gudmundson 2002; Wynne 2005). Evidence suggests that counts in Alaska were lowest in 2002 and 2003, but between 2003 and 2016 pup and non-pup counts have increased by 2.19 percent per year and 2.24 percent per year, respectively (Muto *et al.* 2018). These rates vary regionally, with the highest rates of increase in the eastern Gulf of Alaska and a steadily decreasing rate of increase heading west to the Aleutian Islands.

Steller sea lions are an important subsistence resource for Alaska Natives from southeast Alaska to the Aleutian Islands. There are numerous communities along the shores of the GOA that participate in subsistence hunting. In 2008, 19 sea lions were taken in the Kodiak Island region and 9 were taken along the South Alaska Peninsula (Wolfe *et al.* 2009). As of 2009, data on community subsistence harvests are no longer being collected consistently so no data are available. The most recent 5 years of data available (2004–2008) show an annual average catch of 172 steller sea lions for all areas in Alaska combined except the Pribilof Islands in the Bering Sea (Muto *et al.* 2018).

There was one sighting of 18 Steller sea lions during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011).

Northern Elephant Seal (*Mirounga angustirostris*)

Northern elephant seals breed in California and Baja California, primarily on offshore islands (Stewart *et al.* 1994), from December–March (Stewart and Huber 1993). Adult elephant seals engage in two long northward migrations per year, one following the breeding season, and another following the annual molt, with females returning earlier to molt (March–April) than males (July–August) (Stewart and DeLong 1995). Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 900–1,000 km. Hindell and Perrin (2009) noted that traveling likely takes place in water depths >200 m.

When not breeding, elephant seals feed at sea far from the rookeries, ranging as far north as 60° N, into the GOA and along the Aleutian Islands (Le Boeuf *et al.* 2000). Some seals that were tracked via satellite-tags for no more than 224 days traveled distances in excess of 10,000 km during that time (Le Beouf *et al.* 2000). Northern elephant

seals that were satellite-tagged at a California rookery have been recorded traveling as far west as ~166.5–172.5° E (Le Boeuf *et al.* 2000; Robinson *et al.* 2012; Robinson 2016 in OBIS 2018; Costa 2017 in OBIS 2018). Post-molting seals traveled longer and farther than post-breeding seals (Robinson *et al.* 2012). Rone *et al.* (2014) reported 16 northern fur seal sightings (16 animals) in a June–July 2013 survey in the U.S. Navy training area east of Kodiak. Northern elephant seal males could occur in the GOA throughout the year (Calkins 1986).

California Sea Lion (*Zalophus californianus*)

The primary range of the California sea lion includes the coastal areas and offshore islands of the eastern North Pacific Ocean from BC, Canada, to central Mexico, including the Gulf of California (Jefferson *et al.* 2015). However, its distribution is expanding (Jefferson *et al.* 2015), and its secondary range extends into the GOA where it is occasionally recorded (Maniscalco *et al.* 2004) and southern Mexico (Gallo-Reynoso and Solórzano-Velasco 1991). California sea lions are coastal animals that often haul out on shore throughout the year. King (1983) noted that sea lions are rarely found more than 16 km offshore. During fall and winter surveys off Oregon/Washington, mean distance from shore was ~13 km (Bonnell *et al.* 1992).

California sea lion rookeries are on islands located in southern California, western Baja California, and the Gulf of California (Carretta *et al.* 2016). A single stock is recognized in U.S. waters: The U.S. Stock. Five genetically distinct geographic populations have been identified: (1) Pacific Temperate (includes rookeries in U.S. waters and the Coronados Islands to the south), (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al.* 2009). Animals from the Pacific Temperate population occur in the proposed project area. California sea lions that are sighted in Alaska are typically seen at Steller sea lion rookeries or haulouts, with most sightings occurring between March and May, although they can be found in the GOA year-round (Maniscalco *et al.* 2004).

Harbor Seal (*Phoca vitulina*)

The harbor seal is distributed in the North Atlantic and North Pacific. Two subspecies occur in the Pacific: *P.v. stejnegeri* in the northwest Pacific Ocean and *P.v. richardii* in the eastern Pacific Ocean. Eastern Pacific harbor seals occur in nearshore, coastal, and estuarine areas ranging from Baja California, Mexico, north to the Pribilof Islands in Alaska (Muto *et al.* 2016). Harbor seals inhabit estuarine and coastal waters, hauling out on rocks, reefs, beaches, and glacial ice flows. They are generally non-migratory, but move locally with the tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). Twelve stocks of harbor seals are recognized in Alaska (Muto *et al.* 2016). The proposed survey would take place within the range of three of these stocks: North Kodiak, South Kodiak, and Cook Inlet/Shelikof Strait stocks. Nearby stocks are the Aleutian Islands, Prince William Sound, and Glacier Bay/Icy Strait stocks. There are two stocks in the Bering Sea (Bristol Bay and Pribilof Islands) and four stocks in southeast Alaska.

Female harbor seals give birth to a single pup while hauled out on shore or on glacial ice flows; pups are born from May to mid-July. The mother and pup remain together until weaning occurs at 3–6 weeks (Bishop 1967; Bigg 1969). When molting, which occurs primarily in late August, seals spend the majority of the time hauled out on shore, glacial ice, or other substrates. Juvenile harbor seals can travel significant distances (525 km) to forage or disperse, whereas adults were generally found within 190 km of their tagging location in Prince William Sound, Alaska (Lowry *et al.* 2001). The smaller home range used by adults is suggestive of a strong site fidelity (Pitcher and Calkins 1979; Pitcher and McAllister 1981; Lowry *et al.* 2001). Pups tagged in the GOA most commonly undertook multiple return trips of more than 75 km from natal areas, followed by movements of <25 km from the natal area (Small *et al.* 2005). Pups tagged in Prince William Sound traveled a mean maximum distance of 43.2 km from their tagging location, whereas those tagged in the GOA moved a mean maximum distance of 86.6 km (Small *et al.* 2005).

Harbor seals are an important subsistence resource for Alaska Natives in the northern GOA. In 2011–2012, 37 harbor seals were taken from the North Kodiak Stock and 126 harbor seals were taken from the South Kodiak Stock by communities on Kodiak Island (Muto *et al.* 2016). The number taken from the Cook Inlet/Shelikof Strait Stock for 2011–2012 is unknown, but an average of 233 were taken from this stock annually during 2004–2008 (Muto *et al.* 2016).

There was one sighting of nine harbor seals during the L–DEO seismic survey conducted in the summer of 2011 in the same area as the currently proposed survey (RPS 2011). Harbor seals could be encountered in the proposed survey area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)—Continued

Hearing group	Generalized hearing range *
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twenty-one marine mammal species (16 cetacean and 5 pinniped (3 otariid and 2 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the 16 cetacean species that may be present, 7 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 7 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and 2 are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

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 Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

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 hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square 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.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2 - s$) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0–p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk–pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

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 a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. 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.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. 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 sound 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 sound 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 sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;

• *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and

• *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound 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. 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 human 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 a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). 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.,* airguns, 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, 2005; Harris, 1998; NIOSH, 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 or dredging, 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.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

As described above, a Kongsberg EM 122 MBES, a Knudsen Chirp 3260 SBP, and a Teledyne RDI 75 kHz Ocean Surveyor ADCP would be operated continuously during the proposed surveys, but not during transit to and from the survey areas. Due to the lower source level of the Kongsberg EM 122 MBES relative to the *Langseth's* airgun array (242 dB re 1 μPa · m for the MBES versus a minimum of 258 dB re 1 μPa · m (rms) for the 36 airgun array (NSF–USGS, 2011)), sounds from the MBES are expected to be effectively subsumed by the sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the MBES would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water. Each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore–aft. Given the movement and speed of the vessel, the intermittent and narrow downward-directed nature of the sounds emitted by the MBES would result in no more than one or two brief ping exposures of any individual marine mammal, if any exposure were to occur.

Due to the lower source levels of both the Knudsen Chirp 3260 SBP and the Teledyne RDI 75 kHz Ocean Surveyor ADCP relative to the *Langseth's* airgun array (maximum SL of 222 dB re 1 μPa · m for the SBP and maximum SL of 224 dB re 1 μPa · m for the ADCP, versus a minimum of 258 dB re 1 μPa · m for the 36 airgun array (NSF–USGS, 2011)), sounds from the SBP and ADCP are expected to be effectively subsumed by sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the SBP and/or the ADCP would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water. As such, we conclude that the likelihood of marine mammal take resulting from exposure to sound from the MBES, SBP or ADCP (beyond that which is already quantified as a result of exposure to the airguns) is discountable and therefore we do not consider noise from the MBES, SBP or ADCP further in this analysis.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic 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; Götz *et al.,* 2009). 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. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

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 (Finneran, 2015). 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, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs 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 airgun pulses as received close to the source) are at least 6 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). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

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. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

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.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB.

No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). 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.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016a).

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). 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). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; 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.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array

exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

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, 2005, 2006; Gailey *et al.,* 2007, 2016).

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.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk–pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SEL_{cum} of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

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). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). 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.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

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 sufficiently 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; Erbe *et al.,* 2016). 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.,* 2007; 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.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Langseth* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a,b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal

modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Langseth* travels at a speed of 5 kn (approximately 9.3 km/h) while towing seismic survey gear (LGL 2018). At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95 percent CI = $0 - 5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see *Proposed Mitigation*), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Use of military tactical sonar has been implicated in a majority of investigated stranding events. Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (>235 dB SPL) have been implicated in stranding events (Hildebrand, 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which 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 pulsed sound on fish, although several are based on studies in support of 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 survey activities at the project area would be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 $inch^3$ airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled.

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the proposed survey and any areas used by marine mammal prey species. The proposed use of airguns as part of an active seismic array survey would occur over a relatively short time period (~18 days) and would occur over a very small area relative to the area available as marine mammal habitat in the Gulf of Alaska. We believe any impacts to marine mammals due to adverse affects to their prey would be insignificant due to the limited spatial and temporal impact of the proposed survey. However, adverse impacts may occur to a few species of fish and to zooplankton.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-

mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as this one cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. 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.,* seismic airguns) 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 because predicted auditory injury zones are larger than for low-frequency species, mid-frequency species, phocids, and otariids. However as a precaution, small numbers of takes by Level A harassment are proposed for authorization for all species listed in Table 1 as likely to occur in the proposed survey area. This auditory injury is expected to be, at most, low level PTS and the proposed mitigation and monitoring measures are expected to further minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. L–DEO's proposed activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 µPa (rms) criteria is applicable for analysis of level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L–DEO's proposed seismic survey includes the use of impulsive (seismic airguns) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

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

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed surveys would acquire data with the 36-airgun array with a total discharge of 6,600 in^3 at a maximum tow depth of 12 m. L–DEO model results are used to determine the 160-dBrms radius for the 36-airgun array and 40-in^3 airgun at a 12-m tow depth in deep water (>1,000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) which uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600 − 1,100 m), and shallow water (~50 m) in the Gulf of Mexico (GoM) in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate-water cases, the field measurements cannot be used readily to derive Level A and Level B isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the mitigation model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate-water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of the NSF–USGS, 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the mitigation model curve. However, the observed sound levels are found to fall almost entirely below the mitigation model. Thus, analysis of the GoM calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

In shallow water (<100 m), the depth of the calibration hydrophone (18 m) used during the GoM calibration survey was appropriate to sample the maximum sound level in the water column, and the field measurements reported in Table 1 of Tolstoy *et al.* (2009) for the 36-airgun array at a tow depth of 6 m can be used to derive isopleths.

For deep water (>1,000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (Fig. 16 in Appendix H of the NSF–USGS, 2011).

The shallow-water radii are obtained by scaling the empirically derived measurements from the GoM calibration survey to account for the differences in tow depth between the calibration survey (6 m) and the proposed survey (12 m); whereas the shallow water in the GoM may not exactly replicate the shallow water environment at the proposed survey site, it has been shown to serve as a good and very conservative proxy (Crone *et al.* 2014). A simple scaling factor is calculated from the ratios of the isopleths determined by the deep-water L–DEO model, which are essentially a measure of the energy radiated by the source array.

Measurements have not been reported for the single 40-in^3 airgun. L–DEO model results are used to determine the 160 dB_{rms} radius for the 40-in^3 airgun at a 12-m tow depth in deep water (Fig. A–3 in the IHA application). For intermediate-water depths, a correction factor of 1.5 was applied to the deep-water model results. For shallow water, a scaling of the field measurements obtained for the 36-airgun array was used.

L-DEO's modeling methodology is described in greater detail in the IHA application. The estimated distances to the Level B harassment isopleth for the

Langseth's 36-airgun array and single 40-in^3 airgun are shown in Table 3.

TABLE 3—PREDICTED RADIAL DISTANCES FROM R/V LANGSETH SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the 160-dB received sound level
Single Bolt airgun, 40 in^3	12	>1,000	[1] 431
		100–1,000	[2] 647
		<100	[3] 1,041
4 strings, 36 airguns, 6,600 in^3	12	>1,000	[1] 6,733
		100–1,000	[2] 10,100
		<100	[3] 25,494

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.
[3] Distance is based on empirically derived measurements in the GoM with scaling applied to account for differences in tow depth.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Langseth* airgun array were derived from calculating the modified farfield signature (Table 4). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid. For a more complete explanation of this modeling approach, please see ''Appendix A: Determination of Mitigation Zones'' in the IHA application.

TABLE 4—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE R/V LANGSETH 6,600 IN^3 AIRGUN ARRAY, AND SINGLE 40 IN^3 AIRGUN

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid Pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid Pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 27462 dB)
6,600 in^3 airgun array (Peak SPL_{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in^3 airgun array (SEL_{cum})	232.98	232.84	233.10	232.84	232.08
40 in^3 airgun (Peak SPL_{flat})	223.93	N.A.	223.92	223.95	N.A.
40 in^3 airgun (SEL_{cum})	202.99	202.89	204.37	202.89	202.35

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 Hz bands) was used

to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals provided in the IHA application, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 4. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the 36-airgun array and single 40 in^3 airgun for the surveys are shown is Tables A–2, A–3, A–5, and A–8 in Appendix A of the IHA application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the surveys are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB); $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB); $L_{E,HF,24h}$: 155 dB)	Phocid Pinnipeds (underwater) ($L_{pk,flat}$: 218 dB); $L_{E,HF,24h}$: 185 dB)	Otariid Pinnipeds (underwater) ($L_{pk,flat}$: 232 dB); $L_{E,HF,24h}$: 203 dB)
6,600 in^3 airgun array (Peak SPL_{flat})	38.9	13.6	268.3	43.7	10.6
6,600 in^3 airgun array (SEL_{cum})	40.1	N.A.	0.1	1.3	N.A.
40 in^3 airgun (Peak SPL_{flat})	1.76	N.A.	12.5	1.98	N.A.
40 in^3 airgun (SEL_{cum})	2.38	N.A.	N.A.	N.A.	N.A.

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

In the proposed survey area in the Gulf of Alaska, L–DEO determined the best marine mammal density data to be habitat-based stratified marine mammal densities developed by the U.S. Navy for assessing potential impacts of training activities in the GOA (DoN 2014). Alternative density estimates available for species in this region are not stratified by water depth and therefore do not reflect the known variability in species distribution relative to habitat features. Consistent with Rone *et al.* (2014), four strata were defined: Inshore: All waters <1,000 m deep; Slope: From 1,000 m water depth to the Aleutian trench/subduction zone; Offshore: Waters offshore of the Aleutian trench/subduction zone; Seamount: Waters within defined seamount areas. Densities corresponding to these strata were based on data from several different sources, including Navy funded line-transect surveys in the GOA as described below and in Appendix B.

To develop densities specific to the GOA, the Navy conducted two comprehensive marine mammal surveys in the Temporary Marine Activities Area (TMAA) in the GOA prior to 2014. The first survey was conducted from 10 to 20 April 2009 and the second was from 23 June to 18 July 2013. Both surveys used systematic line-transect survey protocols including visual and acoustic detection methods (Rone *et al.* 2010; Rone *et al.* 2014). The data were collected in four strata that were designed to encompass the four distinct habitats within the TMAA and greater GOA. Rone *et al.* (2014) provided stratified line-transect density estimates used in this analysis for fin, humpback, blue, sperm, and killer whales, as well as northern fur seals (Table 6). Data from a subsequent survey in 2015 were used to calculate alternative density estimates for several species (Rone *et al.* 2017) and the density estimates for Dall's porpoise used here were taken from that source.

DoN (2014) derived gray whale densities in two zones, nearshore (0–2.25 n.mi from shore) and offshore (from 2.25–20 nmi from shore). In our calculations, the nearshore density was used to represent the inshore zone and the offshore density was used to represent the slope zone.

Harbor porpoise densities in DoN (2014) were derived from Hobbs and Waite (2010) which included additional shallow water depth strata. The density estimate from the 100 m to 200 m depth strata was used to represent the entire inshore zone (<1,000 m) in this analysis.

Harbor seals typically remain close to shore so minimal estimates were used for the three deep water zones. To account for increased inshore density, a one thousand fold increase of the minimal density was assumed to represent the entire inshore zone (DoN 2014).

Densities for Minke whale, Pacific white-sided dolpin, and Cuvier's and Baird's beaked whales were based on Waite (2003 *in* DoN 2009). Although sei whale sightings and Stejneger's beaked whale acoustic detections were recorded during the Navy funded GOA surveys, data were insufficient to calculate densities for these species, so predictions from a global model of marine mammals densities were used (DoN 2014).

Steller sea lion and northern elephant seal densities were calculated using shore-based population estimates divided by the area of the GOA Large Marine Ecosystem (DoN 2014).

The North Pacific right whale, Risso's dolphin, and California sea lion are only rarely observed in or near the survey area, so minimal densities were used to represent their potential presence.

However, in the North Pacific right whale critical habitat off of Kodiak Island, it is reasonable to expect a higher density. In this critical habitat area, the Alaska Fisheries Science Center (LOA application available here: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities*) used a conservative density estimate based on acoustic detections (Rone *et al.* 2014) and photo identifications throughout the entirety of the Gulf of Alaska. For the portion of L–DEO's activities that occur in North Pacific right whale critical habitat, NMFS will use this more conservative density estimate (Table 6).

All densities were corrected for perception bias [$f(0)$] but only harbor porpoise densities were corrected for availability bias [$g(0)$], as described by the respective authors. There is some uncertainty related to the estimated density data and the assumptions used in their calculations, as with all density data estimates. However, the approach used here is based on the best available data and are stratified by the water depth (habitat) zones present within the survey area. These depth stratified densities allow L–DEO to better capture known variability in species distribution in the Gulf of Alaska, and accurately assess impacts. Alternative density estimates were available for species in this region, such as those used by the Alaska Fisheries Science Center (AFSC) (AFSC LOA application available here: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities*). AFSC density values were not stratified by water depth and represented marine mammal density throughout the entire Gulf of Alaska. While some density estimates provided in the AFSC application are more conservative, the relative proximity of surveys that generated DoN estimates and L–DEO's consideration and inclusion of publically available newer values from Rone *et al.* (2017) mean the calculated exposures that are based on these densities are best estimates for L–DEO's proposed survey.

TABLE 6—MARINE MAMMAL DENSITY VALUES IN THE PROPOSED SURVEY AREA AND SOURCE

Species [1]	Estimated density (#/1,000 km [2])				Source
	Inshore (<1,000 m)	Slope (1,000 m to Aleutian trench)	Offshore (offshore of Aleutian trench)	Seamount (in defined seamount areas)	
LF Cetaceans:					
North Pacific Right Whale	[2] 0.00001	[2] 0.00001	[2] 0.00001	[2] 0.00001	DoN (2014).
Humpback Whale	0.129	0.0002	0.001	0.001	Rone *et al.* (2014) (Table 16).
Blue whale	0.0005	0.0005	0.0005	0.002	Rone *et al.* (2014) (Table 16).
Fin Whale	0.071	0.014	0.021	0.005	Rone *et al.* (2014) (Table 16).
Sei Whale	0.0001	0.0001	0.0001	0.0001	DoN (2014), adapted from Figure 5–24.
Minke Whale	0.0006	0.0006	0.0006	0.0006	DoN (2014).
Gray Whale	[3] 0.04857	[3] 0.00243	[3] 0	[3] 0	DoN (2014)
MF Cetaceans:					
Sperm Whale	0	0.0033	0.0013	0.00036	DoN (2014).
Killer Whale	0.005	0.02	0.002	0.002	Rone *et al.* (2014) (Table 14).
Pacific White-Sided Dolphin	0.0208	0.0208	0.0208	0.0208	DoN (2014).
Cuvier's Beaked Whale	0.0022	0.0022	0.0022	0.0022	Waite (2003) in DoN (2014)
Baird's Beaked Whale	0.0005	0.0005	0.0005	0.0005	DoN (2014).
Stejneger's Beaked Whale	[4] 0.00001	0.00142	0.00142	0.00142	DoN (2014), adapted from Figure 9–12.
Risso's Dolphin	0.00001	0.00001	0.00001	0.00001	DoN (2014).
HF Cetaceans:					
Harbor Porpoise	0.0473	0	0	0	Hobbes and Waite (2010) in DoN (2014).
Dall's Porpoise	0.218	0.196	0.037	0.024	Rone *et al.* (2017).
Otarrid Seals:					
Steller Sea Lion	0.0098	0.0098	0.0098	0.0098	DoN (2014).
California Sea Lion	0.00001	0.00001	0.00001	0.00001	DoN (2014).
Northern Fur Seal	0.015	0.004	0.017	0.006	Rone *et al.* (2014) (Table 14).
Phocid Seals:					
Northern Elephant Seal	0.0022	0.0022	0.0022	0.022	DoN (2014).
Harbor Seal	0.01	0.00001	0.00001	0.00001	DoN (2014).

[1] No stock specific densities are available so densities are assumed equal for all stocks present.

[2] For North Pacific right whales, estimated density within the Kodiak Island critical habitat is 0.0053 animals/km^2, based on detections from the GOALSII survey (Rone *et al.* 2014), the assumed use of the critical habitat by all right whales in the Gulf of Alaska (Wade *et al.* 2011a), and a conservative correction factor.

[3] Gray whale density was defined in two zones, nearshore (0–2.25 n.mi from shore) and offshore (from 2.25–20 nmi from shore). In our calculations, the nearshore density was used to represent the inshore zone and the offshore density was used to represent the slope zone. In areas further offshore than the slope, density was assumed to be 0.

[4] Stejneger's whale are generally found in slope waters, therefore, assuming minimal inshore density.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B

harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 7), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. Active seismic operations are planned for 18 days during this Gulf of Alaska survey.

TABLE 7—AREAS (km^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY FOR GULF OF ALASKA SURVEY

	Criteria (dB)	Daily ensonified area (km)	Total survey days	25 percent increase	Total ensonified area (km)	Relevant isopleth (m)
Level B						
Inshore [1]	160	19,63.1	18	1.25	44,170.3	10,100
Slope	160	684.1	18	1.25	15,392.8	6,733
Offshore	160	1,159.5	18	1.25	26,087.8	6,733
Seamount	160	1,19.8	18	1.25	2,695.2	6,733
Level A						
LF Cetacean	.....	19.6	18	1.25	441.1	40.1
MF Cetacean	.....	6.6	18	1.25	149.6	13.6
HF Cetacean	.....	131.1	18	1.25	2,950.8	268.3
Otarid	.....	5.2	18	1.25	116.6	10.6
Phocid	.....	21.4	18	1.25	480.6	43.7

[1] Includes area ensonified above 160 dB in waters <100 m deep using an isopleth distance of 25,493 m. See application for further explanation.

The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total areas (km^2) expected to be ensonified to the Level A harassment and Level B harassment thresholds. The marine mammals predicted to occur within these respective areas, based on estimated densities, are assumed to be incidentally taken. Estimated exposures for the Gulf of Alaska seismic survey are shown in Table 8.

TABLE 8—ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK OR POPULATION EXPOSED DURING GULF OF ALASKA SURVEY

	Stock	Level B [1]	Level A [1]	Stock size	Percentage of stock
LF Cetaceans:					
North Pacific Right Whale	Eastern North Pacific	[2] 11	0	31	([3])
Humpback Whale	Central North Pacific (Hawaii DPS) [3]	[4] 5,101	[5] 1	11,398	([3])
	Central North Pacific (Mexico DPS) [3]	[4] 602		3,264	18.44
	Western North Pacific [3]	[4] 29		1,107	2.62
Blue whale	Eastern North Pacific	48	[5] 1	1,647	2.98
	Central North Pacific			133	([3])
Fin Whale	Northeast Pacific	3,912	1	[6] 3,168	([3])
Sei Whale	Eastern North Pacific	8	1	519	1.73
Minke Whale	Alaska	53	1	[7] 1,233	4.38
Gray Whale	Eastern North Pacific	2,182	[5] 1	26,960	8.10
	Western North Pacific			175	([3])
MF Cetaceans:					
Sperm Whale	North Pacific	85	1	[8] 345	24.93
Killer Whale	Alaska Resident	586	[5] 1	2,347	25.01
	Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.			587	([3])
	Offshore			240	([3])
Pacific White-Sided Dolphin	North Pacific	1,837	1	26,880	6.84
Cuvier's Beaked Whale	Alaska	194	1	[9] NA	NA
Baird's Beaked Whale	Alaska	44	1	[9] NA	NA
Stejneger's Beaked Whale	Alaska	63	1	[9] NA	NA
Risso's Dolphin	CA/OR/WA	[10] 16	1	6,336	0.27
HF Cetaceans:					
Harbor Porpoise	Gulf of Alaska	[11] 1,879	[5] 3	31,046	[11] 6.06
	Southeast Alaska	[11] 209		975	[11] 21.74
Dall's Porpoise	Alaska	13,656	21	83,400	16.44
Otarrid Seals:					
Steller Sea Lion	Eastern U.S	865	[5] 1	41,638	2.08

TABLE 8—ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK OR POPULATION EXPOSED DURING GULF OF ALASKA SURVEY—Continued

	Stock	Level B [1]	Level A [1]	Stock size	Percentage of stock
	Western U.S			54,267	1.60
California Sea Lion	U.S	[12] 1	1	296,750	0.00067
Northern Fur Seal	Eastern Pacific	1,183	1	620,660	0.19
Phocid Seals:					
Northern Elephant Seal	California Breeding	194	1	179,000	0.11
Harbor Seal	South Kodiak	442	[5] 1	19,199	2.31
	Cook Inlet/Shelikof Strait			27,386	1.62
	Prince William Sound			29,889	1.48

[1] Conservatively where less than 1 take by Level A harassment was calculated, we are rounding up to propose authorizing 1 take by Level A harassment. Therefore, unless otherwise noted, all calculated takes by Level B harassment have been reduced by the number of authorized takes by Level A harassment. This prevents double counting of takes across the two levels of harassment.

[2] NMFS feels that take by Level A harassment of North Pacific right whale can be effectively avoided based on mitigation and monitoring measures, and therefore has not proposed to authorize a take by Level A harassment for the species.

[3] The percentage of these stocks expected to experience take is discussed further in the *Small Numbers* section later in the document.

[4] Takes are allocated amongst the three DPSs in the area based on Wade *et al.* 2016 (0.5% WNP, 89.0% Hawaii DPS, 10.5% Mexico DPS). Because of rounding, the total take is higher than calculated. Population sizes for the Hawaii and Mexican DPSs are provided in 81 FR 62259 (effective October 11, 2016).

[5] Where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the single Level A take is being analyzed as if it occurred within each stock.

[6] Fin whale abundance estimate is the highest of Rone *et al.* (2017) estimates. Based on the limited footprint of the surveys that lead to this estimate, the true abundance of the stock is expected to be much higher.

[7] Minke whale abundance estimates is from Zerbini *et al.* (2006).

[8] Sperm whale abundance estimates is the maximum value from Rone *et al.* (2017).

[9] For beaked whales, there is no accepted estimates of abundance for the Alaska stocks.

[10] The requested number of takes by Level B harassment for Risso's dolphin has been increased to 16, the average group size. Because this is a qualitative estimate, this take request has not been reduced by 1 to facilitate the requested take by Level A harassment.

[11] Based on the range of the Southeast Alaska stock of harbor porpoises, they are expected to be very rare in the area (See ''Description of Marine Mammals in the Area of Specified Activities''). We therefore conservatively assume that at most, 10 percent of takes will occur from the Southeast Alaska population. The numbers for both Gulf of Alaska and Southeast Alaska stocks reflect this assumption. Because of rounding, the total take between the two stocks is higher than the original calculation.

[12] Only 1 take by Level B harassment was requested for California sea lion, but a take by Level A harassment was also requested. Therefore, the amount of take by Level B harassment has not be reduced by the proposed numbers of take by Level A harassment.

It should be noted that the proposed take numbers shown in Table 8 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Note that for North Pacific right whales and Risso's dolphin, we propose to authorize a different number of incidental takes than the number of incidental takes requested by L–DEO (see Table 6 in the IHA application for requested take numbers). For Risso's dolphin, we proposed to authorize take by Level B harassment of an average sized group, 16 individuals, instead of the single individual requested by L–DEO. Our rational for North Pacific right whale take is described below.

For North Pacific right whale, there is evidence of a much higher density in the critical habitat south of Kodiak Island (Table 6). This density value of 0.0053 animals/km^2 is based on detections from the GOALSII survey (4 individuals) (Rone *et al.* 2014), the assumed use of the critical habitat by all right whales in the Gulf of Alaska (Wade et al 2011a), and a conservative correction factor (4), all divided by the area of the critical habitat (3,042.2 km^2). To account for this habitat, NMFS used the Alaska Protected Resources Division Species Distribution Mapper (*https://www.fisheries.noaa.gov/resource/data/alaska-endangered-species-and-critical-habitat-mapper-web-application*) to determine a conservative approximation of L–DEO's survey path through the critical habitat based on the representative tracks in Figure 1 of the IHA Application. This measured distance was 35 km. Because the majority of this habitat is inside of the 100 m isopleth, the predicted distance to the 160-dB received sound level would be ~25.5 km. This resulted in a portion of the critical habitat 35 km long by 51 km wide (25.5 km on each side of the survey track), or 1,785 km^2 being ensonified. Applying the higher density of 0.0053 animals/km^2 to this area, results in an estimate of 9.46 North Pacific right whales exposed to Level B harassment in the critical habitat. No further correction, such as the 25 percent operation day increase, is needed for the estimate in the critical habitat, because the density of 0.0053 animals/km^2 has already been corrected to be highly conservative (AFSC Application, Table 6–10d). To account for the rest of the survey occurring outside of the critical habitat, the minimal density presented in DoN (2014), 0.00001 individuals/km^2, was used for the remainder of the survey. The expected take in the rest of the survey is 1.10 individuals. Summing these two estimates for take, in both the critical habitat and remainder of survey, results in an expected take of 10.56 individuals (rounded to 11 individuals). With other species one calculated take was conservatively assumed to be a take by Level A harassment (Table 8), however no takes by Level A harassment are proposed for authorization for North Pacific right whale given the low density of the species and NMFS evaluation of the effectiveness of mitigation and monitoring measures.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

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

In the GOA, the marine mammals that are hunted are Steller sea lions and harbor seals. In 2011–2012, 37 harbor seals were taken from the North Kodiak Stock and 126 harbor seals were taken from the South Kodiak Stock by communities on Kodiak Island (Muto *et al.* 2016). The number taken from the Cook Inlet/Shelikof Strait Stock for 2011–2012 is unknown, but an average of 233 were taken from this stock annually during 2004–2008 (Muto *et al.* 2016). The seasonal distribution of harbor seal takes by Alaska Natives typically shows two distinct hunting peaks—one during spring and one during fall and early winter; however, seals are taken in all months (Wolfe *et al.* 2012). In general, the months of highest harvest are September through December, with a smaller peak in February/March (Wolfe *et al.* 2012). Harvests are traditionally low from May through August, when harbor seals are raising pups and molting.

In 2008, 19 Steller sea lions were taken in the Kodiak Island region and 9 were taken along the South Alaska Peninsula (Wolfe *et al.* 2009). As of 2009, data on community subsistence harvests are no longer being collected consistently so few data are available. Wolfe *et al.* (2012) reported an estimated 20 sea lions taken by hunters on Kodiak Island in 2011. The most recent 5-year period with data available (2004–2008) shows an annual average catch of 172 steller sea lions for all areas in Alaska combined except the Pribilof Islands in the Bering Sea (Muto *et al.* 2018). Sea lions are taken from Kodiak Island in low numbers year round (Wolfe *et al.* 2012).

The proposed project could potentially impact the availability of marine mammals for harvest in a small area immediately around the *Langseth,* and for a very short time period during seismic operations. Considering the limited time that the planned seismic surveys would take place close to shore, where most subsistence harvest of marine mammals occurs in the Gulf of Alaska, the proposed project is not expected to have any significant impacts to the availability of Steller sea lions or harbor seals for subsistence harvest. Additionally, to mitigate any possible conflict, community outreach is planned and described further in ''Proposed Mitigation'' below.

Proposed Mitigation

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

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully 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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned) and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

L–DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the proposed surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Power down procedures; (5) Shutdown procedures; (6) Ramp-up procedures; (7) Vessel strike avoidance measures; and (8) Sensitive Habitat Measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m exclusion zone, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). Visual monitoring of the exclusion zones and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring close to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the

exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone.

L–DEO must use at least five dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, during a deep penetration (*i.e.,* ''high energy'') seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself).

During use of the airgun (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable. Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

Passive acoustic monitoring (PAM) would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The *R/V Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

Establishment of an Exclusion Zone and Buffer Zone

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 500 m radius for the 36 airgun array. The 500 m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The 500 m EZ is intended to be precautionary in the sense that it would

be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SELcum and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500 m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

Because the North Pacific right whale is a stock of high concern, L–DEO will implement a shutdown if the species is observed at any distance. In addition, when transiting through North Pacific right whale critical habitat, L–DEO must do any such transit during daylight hours, to facilitate the ability of PSOs to observe any right whales that may be present. Additionally, for high risk circumstances, such as observation of a calf or aggregation of whales, L–DEO will shutdown if these circumstances are observed at any distance.

Finally, to minimize impact on fin whales in their feeding BIA near Kodiak Island, L–DEO must observe a larger EZ for this species while in the BIA. If a fin whale or group of fin whales is observed with 1,500 m of the acoustic source within the fin whale BIA, L–DEO must implement a shutdown.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance).
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in.
- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and 30 minutes for all other species).
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed.
- PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, observations of marine mammals within the buffer zone do not require shutdown or powerdown, but such observation shall be communicated to the operator to prepare for the potential shutdown or powerdown.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances.
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown and powerdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 min is not required.
- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown and Powerdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array while a powerdown requires immediate de-activation of all individual airgun elements of the array except the single 40-in^3 airgun. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown or powerdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown and powerdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up and powerdown) and (1) a marine mammal appears within or enters the applicable exclusion zone and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately

deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 500 m EZ. The animal would be considered to have cleared the 500 m EZ if it is visually observed to have departed the 500 m EZ, or it has not been seen within the 500 m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm Cuvier's beaked, Baird's beaked, Stejneger's beaked, and killer whales.

The shutdown requirement can be waived for small dolphins in which case the acoustic source shall be powered down to the single 40-in^3 airgun if an individual is visually detected within the exclusion zone. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins—*Lagenorhynchus and Grampus*—The acoustic source shall be powered down to 40-in^3 airgun if an individual belonging to these genera is visually detected within the 500 m exclusion zone.

Powerdown conditions shall be maintained until delphinids for which shutdown is waived are no longer observed within the 500 m exclusion zone, following which full-power operations may be resumed without ramp-up. Visual PSOs may elect to waive the powerdown requirement if delphinids for which shutdown is waived to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

We include this small delphinid exception because power-down/shutdown requirements for small delphinids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the *R/V Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small delphinids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a power-down/shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Powerdown conditions shall be maintained until the marine mammal(s) of the above listed genera are no longer observed within the exclusion zone, following which full-power operations may be resumed without ramp-up. Additionally, visual PSOs may elect to waive the powerdown requirement if the small dolphin(s) appear to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision. Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone). If PSOs observe any behaviors in a small delphinid for which shutdown is waived that indicate an adverse reaction, then powerdown will be initiated immediately.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and 30 minutes for all other species with no further observation of the marine mammal(s).

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (*i.e.,* as a large whale or other marine mammal).

2. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all baleen whales).

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel.

5. When marine mammals are sighted while a vessel is underway, the vessel

should take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, NMFS has preliminarily determined that the 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.

Sensitive Habitat Measures

Because the propose survey overlaps with BIAs and critical habitat for some species (see MM Occurance), L–DEO will implement additional measures related to these areas including area avoidance and the implementation of special shutdown zones. For Steller sea lion rookeries and major haulouts, classified as critical habitat (58 FR 45269, August 27, 1993). Steller sea lions maintain rookeries and major haul-outs in the area of L–DEO's survey (Figure 1 in the IHA Application). Additionally the timing of the survey overlaps with the breeding season of Steller sea lions. As such, L–DEO must observe a three nautical mile exclusion zone around these critical habitats. This means that L–DEO avoid transiting through and operating seismic airguns in these areas.

A portion of L–DEO's proposed survey will also occur in the fin whale BIA (Ferguson *et al.* 2015). Because of the temporal and spatial overlap in the proposed survey and peak use of the fin whale BIA, L–DEO will implement a shutdown if a fin whale or group of fin whales is observed at within a 1,500 m radius from the acoustic source, within their BIA. L–DEO will refer to Ferguson *et al.* (2015) for the location of the BIA, but waters around the Semidi Islands, Kodiak Island, and Chirikof Island generally define the portion of the BIA L–DEO is expected to transit through.

The expected elevated density of North Pacific right whales in their critical habitat means that additional measures are prudent for this area. When transiting through North Pacific right whale critical habitat, L–DEO must do any such transit during daylight hours, to facilitate the ability of PSOs to observe any right whales that may be present. This measure is in addition to the requirement that L–DEO must implement a shutdown if a North Pacific right whale is observed at any distance.

Mitigation for Subsistence Uses of Marine Mammals—Community Outreach

Although impacts on subsistence uses are not expected due to the strong separation in time and space between marine mammal subsistence harvest and L–DEO's proposed activities, project principle investigators will conduct outreach with communities near the planned project area to identify and avoid areas of potential conflict, including for marine subsistence activities. This measure will mitigate any potential negative impact on subsistence hunting activities, despite there being no expected significant impact.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

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

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

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

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start ups (if applicable) of the airguns. During seismic operations, at least six visual PSOs would be based aboard the *Langseth.* Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel;
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Date and participants of PSO briefings;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
- Date and time when first and last heard;
- Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal);
- Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

A report would be submitted to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected.

Reporting

L–DEO will be required to shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of protected species near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all protected species sightings (dates, times, locations, activities, associated survey activities). The report will also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected. The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and the IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 1, given that NMFS expects the anticipated effects of the proposed seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's proposed survey, even in the absence of proposed mitigation. Thus the proposed authorization does not authorize any mortality. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We propose to authorize a limited number of instances of Level A and Level B harassment of 21 species of marine mammal species. For 19 of these species, a single take by Level A harassment is authorized as a precaution. However, we believe that any PTS incurred in marine mammals as a result of the proposed activity would be in the form of only a small degree of PTS, not total deafness, and would be unlikely to affect the fitness of any individuals, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions which, because of their comparatively short duration, are considered to be of lower severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (~18 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The tracklines of this survey either traverse or are proximal to the BIAs for four baleen whale species including fin, gray, North Pacific right, and humpback whales in U.S. waters of the Gulf of Alaska (Ferguson *et al.* 2015). Additionally, there is a BIA for beluga whales in nearby Cook Inlet, but the location of the BIA means the habitat will not co-occur with L–DEO's survey (Ferguson *et al.* 2015). The North Pacific Right whale feeding BIA east of the Kodiak Archipelago is primarily used between June and September. The fin whale feeding BIA that stretches from Kenai Peninsula through the Alaska Peninsula is primarily used between June and August. The gray whale feeding BIA east of the Kodiak Archipelago is primarily used between June and August. For the North Pacific Right whale, gray whale, and fin whale feeding BIAs, L–DEO's survey planned for June 1 through June 19, 2019 could overlap with a period where BIAs represent an important habitat. However, only of a portion of seismic survey days would actually occur in or near these BIAs, and all survey efforts should be completed by mid-June, still in the early window of primary use for all these BIAs. Additionally, there mitigation measures that should further reduce take number and severity for fin whales and North Pacific right whales. These include the requirement to shutdown the acoustic source if a fin whale, within the fin whale BIA, is observed within 1,500 meters of the source and the requirement to shutdown if a North Pacific right whale is observed at any distance from the source. The gray whale migratory corridor BIA and humpback whale feeding BIAs overlap spatially with L–DEO's survey, but the timing of primary use of these BIAs does not overlap temporally with the survey. Gray whales are most commonly seen migratory northward between March and May and southward between November and January. As proposed, there is no possibility that L–DEO's survey impacts the southern migration, and presence of northern migrating individuals should be below peak during survey operations beginning in June 2019. Additionally, humpback whale feeding BIAs in the region are primarily used between July and August or September. L–DEO's survey efforts should be completed before peak use of these feeding habitats. For all habitats, no physical impacts to BIA habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish and invertebrate mortality, in feeding habitats, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area and any injury or mortality of prey species would be localized around the survey and not of a degree that would adversely impact marine mammal foraging. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing BIAs, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within the designated BIAs.

Critical habitat has been designated for the ESA listed North Pacific right whale and western DPS of Steller sea lions. Only a portion of L–DEO's planned seismic survey will occur in these critical habitats. Steller sea lion critical habitat also includes a ''no approach'' zone within 3 nmi of rookeries. Steller sea lions both occupy rookeries and pup from late-May through early-July (NMFS 2008), which coincides with L–DEO's proposed survey. Thus, we are requiring that the proposed survey avoid transiting or surveying within 3 nmi of any rookeries. For North Pacific right whale critical habitat, L–DEO would only need to traverse approximately 35 km of the designated critical habitat. At a speed of approximately 9.3 km per hour (5 kn), L–DEO would only be in the critical habitat for less than 4 hours. L–DEO would only traverse this critical habitat during daylight hours to facilitate the ability of PSOs to observe any right whales that may be present, so as to reduce the potential for their exposure to airgun noise. Additionally, L–DEO would be required to shutdown seismic airguns if a North Pacific right whale is observed at any distance, further minimizing the impacts on North Pacific right whales in their critical habitat and elsewhere. The characteristics that make this habitat an important feeding area for North Pacific right whales are abundant planktonic food sources. While there are possible impacts of seismic activity on plankton (McCauley *et al.,* 2017), the currents that flow through the Gulf of Alaska will readily refresh plankton resources in the area. As such, this seismic activity is not expected to have a lasting physical impact on habitat or prey within it. Any impact would be a temporary increase in sound levels when the survey is occurring in or near the critical habitat and resulting temporary avoidance of prey or marine mammals themselves due these elevated sound levels.

After accounting for qualitative factors, the activity is expected to impact a small percentage of all marine mammal stocks that would be affected by L–DEO's proposed survey (see ''Small Numbers'' below). Additionally, the acoustic ''footprint'' of the proposed survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via power downs and/or shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing, at least to some extent, potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation (although all authorized PTS has been accounted for in this analysis).

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

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

- No mortality is anticipated or authorized;
- The proposed activity is temporary and of relatively short duration (~18 days);
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of potential PTS that may occur are expected to be very small in number.

Instances of potential PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);

- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited;
- The proposed mitigation measures, including visual and acoustic monitoring, power-downs, shutdowns, and enhanced measures for areas of biological importance are expected to minimize potential impacts to marine mammals (both amount and severity).

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.

There are seven stocks for which the estimated instances of take appear high when compared to the stock abundance (Table 8), including the Northeast Pacific fin whale stock, the North Pacific right whale stock, the Western North Pacific gray whale stock, the Central North Pacific blue whale stock, the Central North Pacific humpback whale stock (Hawaii DPS), the Offshore killer whale stock, and the Gulf of Alaska, Aleutian Islands, and Bering Sea transient killer whale stock. However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. We discuss these in further detail below.

For an additional three stocks (Alaska stocks of the three beaked whale species), there are no abundance estimates upon which to base a comparison. However, we note that the anticipated number of incidents of take by Level B and Level A harassment are low (46 to 196 for these three stocks) and represent a small number of animals within these stocks, which have extensive ranges across large parts of the North Pacific Ocean compared to L–DEO's proposed survey area (Muto *et al,* 2018). Based on the broad spatial distributions of these species relative to the proposed survey area, NMFS concludes that the authorized take of these species represent small numbers relative to the affected species' overall population sizes, though we are unable to quantify the authorized take numbers as a percentage of population.

For all other stocks (aside from the seven referenced above and described below and the three beaked whales), the authorized take is less than 25% as compared to the stock abundance (recognizing that some of those takes may be repeats of the same individual, thus rendering the percentage even lower).

The expected take of the Northeast Pacific stock of fin whales appears to impact a high percentage of the population (123.5 percent), but this percentage is based on an occurrence estimate which surveyed only a small portion of the range (Rone *et al.* 2017), and no representative estimate of the full stock abundance is available (Muto et al. 2018). The range of the Northeast Pacific fin whale stock extends through much of the north Pacific (Muto *et al.* 2018). Based on the small portion of the stock's range that Rone *et al.* (2017) observed, the full stock abundance would be much higher than 3,168 individuals, reducing the percentage of the population that would be impacted by take from L–DEO's activities. Additionally, L–DEO's actions are located in a small portion of the total range and will occur within a short period of less than a month. L–DEO's previous marine mammal monitoring in the Gulf of Alaska reported 79 fin whales (RPS 2011) and Zerbini *et al.* (2006) observed 530 fin whales across 3 years of summer surveys in the Northern Gulf of Alaska. Given these previous observations, it is not realistic that L–DEO will encounter 3,914 individual fin whales. Instead, given the range of the species, the known underestimate of stock abundance, and the comparatively small action area, combined with the short duration of the survey, it is more likely that there will be multiple instances of take to a smaller number of individuals that are in the action area during the proposed survey and entirely unlikely that more than a third of the stock would be exposed to the seismic survey.

The estimated instances of take for North Pacific right whales appears high compared to stock abundance (35.5 percent), but realistically 11 right whales are not likely to experience harassment. Given the higher assumed density of whales in the critical habitat area off of Kodiak Island, the vast majority of estimated takes would occur in that area (see ''*Take Calculation and Estimation*''). Overall, right whales are very rarely detected in the Gulf of Alaska, and most evidence of the region's importance for the species is based on historic whaling records (Muto *et al.,* 2018). Either visual or acoustic detections of a single right whale are rare in the Gulf of Alaska. North Pacific right whales are much more commonly detected in their Bering Sea critical habitat (73 FR 19000, April 8, 2008; Muto *et al.,* 2018). Given this evidence, only a small portion of the population is expected to be present in the Gulf of Alaska and the Kodiak Island critical habitat. As such, it is more realistic to believe there will be multiple takes of the few individuals present, comprising less than a third of the stock. Additionally, L–DEO proposed survey will only impact the North Pacific right whale critical habitat for a very short portion of their survey and there are additional mitigation measures in place to further minimize any acoustic impacts on North Pacific right whales.

The amount of take expected for the Western North Pacific stock (WNP) of gray whales appears high (1247.43 percent). In reality, 2,183 individuals will be not experience take from this stock. There are two stocks of gray whales in this area, the WNP and the Eastern North Pacific stock (ENP). It is more realistic to apportion expected takes between these stocks. NMFS has no commonly used method to estimate the relative occurrence of these stocks, but here we propose to apportion the takes between the two stocks using their relative abundances and a correction factor to ensure this number is conservative. The total abundance of the two stocks is 27,135 gray whales. Based on estimates of stock size (Table 1), 0.65 percent of encountered gray whales would be expected to come from the

WNP stock, and 99.35 percent would be expected to come from the ENP stock, which results in an apportioned take estimate for each stock of 14 (WNP) and 2,169 (ENP). To represent uncertainty in this method and produce a conservative estimate, we then double the apportioned take for the smaller stocks, resulting in an estimated 28 takes for the WNP stock. This estimated level of take is expected to impact an estimated 16 percent of the WNP stock. Further supporting this conclusion, the summer feeding grounds of WNP gray whales are believed to be off the Sakhalin Islands and other parts of coastal eastern Russia. In total, 27 to 30 whales have been observed in both the WNP and ENP, meaning that while some whales identified on these summer grounds have been observed overwintering in the eastern Pacific around North America, some also migrate to Japanese and Chinese waters (Caretta *et al.,* 2014; Caretta *et al.,* 2019 DRAFT). Based on relative abundance of gray whale stocks and knowledge of behavior, the WNP stock is expected to make up a small portion of the gray whales that will experience take from L–DEO's activity. Therefore, it is entirely unlikely that more than a third of the stock would be exposed to the seismic survey.

The expected instances of take of the Central North Pacific (CNP) stock of blue whales appears high when compared to the abundance (37 percent), however, in reality 50 CNP blue whales are not likely to be harassed. Blue whales belonging to the CNP stock appear to feed in summer in waters southwest of Kamchatka, south of the Aleutians, and in the Gulf of Alaska (Stafford 2003; Watkins *et al.* 2000). Because of this large summer range of CNP blue whales compared to the size of L–DEO's action area, it is more likely that there will be multiple takes of a smaller number of individuals that would occur within the action area, and the percentage of the stock taken will be less than a third of the individuals.

For humpback whales, takes are apportioned between the different stocks or DPSs present based on Wade *et al.* (2016). With this apportionment, the expected instances of take of the Central North Pacific stock's Hawaii DPS appears high (44.8 percent of the estimated DPS abundance). In reality, 5101 Hawaii DPS humpback whales are not likely to be harassed, as it is more likely that a smaller number of individuals will experience multiple takes. The Gulf of Alaska is an important center of humpback whale abundance, and L–DEO's survey affects a portion of the Gulf of Alaska. The highest densities of humpback whales in the Gulf of Alaska are observed between July and August (Ferguson *et al.,* 2015), while L–DEO's survey is planned for June, so the survey should not overlap with peak abundance. Additionally, there are other areas of high humpback whale density in the Aleutian Islands and Bering Sea (Muto *et al.* 2018). This evidence, plus the CNP stock's large range relative to L–DEO's action area, along with the short duration of the survey, mean that it is more likely that there will be multiple takes of a smaller portion of the individuals that occur in L–DEO's action area, and fewer than a third of the individuals in the stock will be taken.

The expected instances of take from both the Offshore and Gulf of Alaska, Aleutian Islands, and Bering Sea transient stocks of killer whales appears high when compared against the stock abundance (245 percent and 100.2 percent respectively). In reality, 588 individuals will not experience take from each of these stocks. There are three stocks of killer whales in this area, including the Eastern North Pacific Alaska Resident stock, and it is more realistic to apportion expected takes between these stocks. NMFS has no commonly used method to estimate the relative occurrence of these stocks, but here we propose to apportion the takes between the three stocks using their relative abundances and a correction factor to ensure this number is conservative. The total abundance of the three stocks in the area is 3,174 killer whales. Based on estimates of stock size, 73.9 percent of encountered killer whales would be expected to come from the Alaska resident stock, 18.5 percent would be expected to come from the Gulf of Alaska, Aleutian Islands, and Bering Sea stock, and 7.6 percent would be expected to come from the offshore stock, which come to a take estimate for each stock of 434.8, 108.7 and 44.5 respectively. To represent uncertainty in this method and produce a conservative estimate, we then double the apportioned take for each of the smaller stocks, resulting in an estimated 218 takes for the Gulf of Alaska, Aleutian Islands, and Bering Sea stock and 90 takes for the Offshore stock. Carrying these estimates along results in 37.1 percent of the Gulf of Alaska, Aleutian Islands, and Bering Sea stock experiencing take and 37.5 of the Offshore stock experiencing take. While these numbers still appear high, the extensive ranges of both stocks compared to L–DEO's action area, as well as the short duration of the survey, mean that realistically there will be multiple takes of a smaller portion of both killer whale stocks, resulting in no more than a third of the individuals of any of these stocks being taken. Individuals from the offshore stock are known to undertake large movements across their entire range, from the Aleutian Islands to the California coast and use numerous portions of this habitat in the spring and summer (Dahlheim *et al.* 2008). The Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock occupies a range that includes all of the U.S. EEZ in Alaska (Muto *et al.* 2018), with L–DEO only impacting a portion of this range for a limited time period.

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

Unmitigable Adverse Impact Analysis and Determination

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

In the GOA, the marine mammals that are hunted are Steller sea lions and harbor seals. For seals, these harvests are traditionally low from May through August, when harbor seals are raising pups and molting. Sea lions are taken from Kodiak Island and other locations in the action area in low numbers year round, but harvests are minimal during late spring and summer (Wolfe *et al.* 2012).

L–DEO's proposed seismic survey would occur during a period of low harbor seal and Stellar sea lion harvest, so any impact on subsistence activities will be minimal. Additionally, the survey will occur for approximately 18 days, and the portion of the survey that would occur in nearshore waters, where

pinniped harvest is most likely, would be even shorter. L–DEO has also planned to conduct outreach to subsistence users in the area, in order to determine if potential use conflicts exists and avoid these conflicts if possible. This outreach, in combination with mitigation measures to avoid Steller sea lion rookeries and haulouts, marine mammal monitoring, and establishing exclusion zones, will effectively minimize impacts on these marine mammals and resulting impacts on subsistence users.

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

Endangered Species Act (ESA)

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

NMFS is proposing to authorize take of blue whale, fin whale, gray whale (WNP DPS), humpback whale (Mexico DPS and Western North Pacific DPS), North Pacific right whale, sei whale, sperm whale, and Steller sea lion (Western DPS), which are listed under the ESA.

The Permits and Conservation Division has requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting seismic surveys in the Gulf of Alaska in spring/early summer of 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for L–DEO's proposed survey. 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 one-year IHA renewal with an expedited public comment period (15 days) 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 under the proposed renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 3, 2019.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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Part III

Library of Congress

Copyright Office

37 CFR Part 201

Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited; Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018–8]

Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule regarding the Classics Protection and Access Act, title II of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. In connection with the establishment of federal remedies for unauthorized uses of sound recordings fixed before February 15, 1972 (''Pre-1972 Sound Recordings''), Congress established an exception for certain noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. To qualify for this exception, a user must file a notice of noncommercial use after conducting a good faith, reasonable search to determine whether the Pre-1972 Sound Recording is being commercially exploited, and the rights owner of the sound recording must not object to the use within 90 days. After soliciting three rounds of public comments through a notice of inquiry and a notice of proposed rulemaking, the Office is issuing final regulations identifying the specific steps that a user should take to demonstrate she has made a good faith, reasonable search. The rule also details the filing requirements for the user to submit a notice of noncommercial use and for a rights owner to submit a notice opting out of such use.

DATES: Effective May 9, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Anna Chauvet, Associate General Counsel, by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA''), the Classics Protection and Access Act, created chapter 14 of the copyright law, title 17, United States Code, which, among other things, extends remedies for copyright infringement to owners of sound recordings fixed before February 15, 1972 (''Pre-1972 Sound Recordings''). Under the provision, rights owners are eligible to recover statutory damages and/or attorneys' fees for the unauthorized use of their Pre-1972 Sound Recordings if certain requirements are met. To be eligible for these remedies, rights owners must typically file schedules listing their Pre-1972 Sound Recordings (''Pre-1972 Schedules'') with the U.S. Copyright Office (the ''Office''), which are indexed into the Office's public records.[1] This requirement is ''designed to operate in place of a formal registration requirement that normally applies to claims involving statutory damages.'' [2]

The MMA also creates a new mechanism for users to obtain authorization to make noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. Under section 1401, a person may file a notice with the Copyright Office proposing a specific noncommercial use after taking steps to determine whether the recording is, at that time, being commercially exploited by or under the authority of the rights owner.[3] Specifically, before determining that the recording is not being commercially exploited, a person must first undertake a ''good faith, reasonable search'' of both the Pre-1972 Schedules indexed by the Copyright Office and music services ''offering a comprehensive set of sound recordings for sale or streaming.'' [4] At that point, the potential user may file a notice identifying the Pre-1972 Sound Recording and nature of the intended noncommercial use with the Office (a ''notice of noncommercial use'' or ''NNU''), and this notice is also indexed into the Office's public records.[5]

In response, the rights owner of the Pre-1972 Sound Recording may file a notice with the Copyright Office ''opting out'' of (*i.e.,* objecting to) the requested noncommercial use (''Pre-1972 Opt-Out Notice''), and a user nonetheless engaging in such use may be subject to liability under section 1401(a).[6] A rights owner has 90 days from the date the NNU is indexed into the Office's public records to file a Pre-1972 Opt-Out Notice.[7] If, however, the rights owner does not opt-out within 90 days, the user may engage in the noncommercial use of the Pre-1972 Sound Recording without violating section 1401(a).[8]

The MMA requires the Copyright Office to issue regulations identifying the ''specific, reasonable steps that, if taken by a [noncommercial user of a Pre-1972 Sound Recording], are sufficient to constitute a good faith, reasonable search'' of the Office's records and music services to support a conclusion that a relevant Pre-1972 Sound Recording is not being commercially exploited.[9] A user following these ''specific, reasonable steps'' will satisfy the statutory requirement of conducting a good faith search, even if the sound recording is later discovered to be commercially exploited.[10] Other searches may also satisfy this statutory requirement, but the user would need to independently demonstrate how she met the requirement if challenged.[11] The Office must also issue regulations ''establish[ing] the form, content, and procedures'' for users to file NNUs and rights owners to file Pre-1972 Opt-Out Notices.[12]

On October 16, 2018, the Office issued a notice of inquiry (''NOI'') soliciting comments regarding the specific steps a user should take to demonstrate she has made a good faith, reasonable search; the filing requirements for the user to submit an NNU; and the filing requirements for a rights owner to submit a Pre-1972 Opt-Out Notice objecting to such use.[13] On February 5, 2019, the Office issued a notice of proposed rulemaking (''NPRM'') soliciting comments on proposed regulations regarding these same issues.[14] In response to the NPRM, the Office received nine comments, discussed further below.[15]

Having reviewed and carefully considered the comments, the Office now issues a final rule.[16]

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[1] 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II).

[2] H.R. Rep. No. 115–651, at 16 (2018); *see* S. Rep. No. 115–339, at 18 (2018).

[3] 17 U.S.C. 1401(c)(1)(A)–(B).

[4] *Id.* at 1401(c)(1)(A).

[5] *Id.* at 1401(c)(1)(B), (C).

[6] *Id.* at 1401(c)(1). The Office notes that a rights owner may opt out of the proposed use for any reason.

[7] *Id.* at 1401(c)(1)(C).

[8] *Id.* at 1401(c)(1).

[9] *Id.* at 1401(c)(3)(A).

[10] *Id.* at 1401(c)(4)(B).

[11] *Id.* at 1401(c)(4)(A)–(B).

[12] *Id.* at 1401(c)(3)(B), (5)(A).

[13] 83 FR 52176 (Oct. 16, 2018) (''NOI''). Twenty-five comments were received in response to the NOI.

[14] 84 FR 1661 (Feb. 5, 2019) (''NPRM'').

[15] The comments received in response to the NOI and NPRM are available online at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2018-0008.* References to these comments are by party name (abbreviated where appropriate), followed by ''Initial,'' ''Reply,'' or ''NPRM Comment,'' as appropriate.

[16] Public Knowledge alludes to the Office's need to address concerns raised in its written comments. Public Knowledge NPRM Comment at 10 n.13. The Office believes the NPRM and final rule reflect careful and appropriate consideration of comments as required under the Administrative Procedure Act.

II. Final Rule

The final rule governs three specific areas: (i) The ''specific, reasonable steps that, if taken by a [noncommercial user of a Pre-1972 Sound Recording], are sufficient to constitute a good faith, reasonable search'' to support a conclusion that a relevant Pre-1972 Sound Recording is not being commercially exploited; (ii) the form, content, and procedures for a user, having made such a search, to file an NNU; and (iii) the form, content, and procedures for a rights owner to file a Pre-1972 Opt-Out Notice.[17]

As described in more detail by the NPRM, the Office confirms that the noncommercial use exception under section 1401(c) is supplementary and does not negate other exceptions and limitations that may be available to a prospective user, including fair use and the exceptions for libraries and archives.[18] Regarding fair use specifically, the Office notes that although certain noncommercial uses may constitute fair use, not all may be fair; instead, courts will balance the purpose and character of the use against the other fair use factors.[19] Similarly, the Office confirms that the noncommercial use exception should not affect application of the section 108(h) exception available for libraries and archives performing a reasonable investigation regarding the availability of published works in the last twenty years of their copyright term.[20]

In addition to promulgating this rule, the Copyright Office intends to prepare additional public resources regarding Pre-1972 Sound Recordings and the new noncommercial use exception, such as a public circular.

A. Good Faith, Reasonable Search

The proposed rule identified five steps (six in the case of Alaska Native and American Indian ethnographic sound recordings) that, if taken, would support a conclusion that a relevant Pre-1972 Sound Recording is not being commercially exploited.[21] The final rule largely adopts the proposed rule, with some adjustments in response to public comment, including one additional step. Consistent with the statute's directive to provide ''specific'' steps that are ''sufficient, but not necessary'' to demonstrate a Pre-1972 Sound Recording is not being commercialized, the rule adopts a ''checklist'' approach for users to search across categories rather than an ''open-ended'' approach to better provide certainty to users.[22] Users should progressively search through a set number of categories if and until a match is found, with a match evidencing commercial exploitation of the Pre-1972 Sound Recording.[23] The categories to be searched are listed in recommended search order, to reduce the likelihood of duplicative searching.[24] In cases where the type of recording (*e.g.,* classical music or ethnographic sound recordings) warrants searching an additional resource or more particularized search criteria, these criteria are included on a tailored basis, as applicable to a particular genre.[25]

The comments received overwhelmingly praised the proposed rule, describing it as ''balanced,'' [26] ''measured,'' [27] ''thoughtful and realistic,'' [28] and a ''common-sense approach.'' [29] A number of stakeholders favored the Office's ''checklist'' approach; [30] for example, EFF stated that the ''proposed five- or six-step search methodology for identifying commercial exploitation is generally reasonable,'' [31] and A2IM and RIAA ''believe the checklist-based approach aptly balances users' need for simplicity with rights owners' need for thoroughness.'' [32]

The final rule preserves this basic framework, with a few adjustments discussed below, including an additional step for locating uses on YouTube authorized by the rightsholder. In sum, the final rule requires searching the following:

1. The Copyright Office's database of Pre-1972 Schedules;
2. One of the following major search engines: Google, Yahoo!, or Bing;
3. One of the following major streaming services: Amazon Music Unlimited, Apple Music, Spotify, or TIDAL;
4. YouTube, for authorized uses;
5. The SoundExchange ISRC database;
6. Amazon.com, and, where the prospective user reasonably believes the recording implicates a listed niche genre, an additional listed online retailer of physical product; and
7. In the case of ethnographic Pre-1972 Sound Recordings of Alaska Native or American Indian tribes, searching through contacting the relevant tribe, association, and/or holding institution.

As reflected by the bulk of the comments received, the Office concludes that the final rule steps are reasonable to expect of an individual user, yet exhaustive enough to qualify that user for a safe harbor as to the search's sufficiency from the perspective of rights owners' interests. As noted in the NPRM, the Office is concerned that limiting sources to be searched to only the most commercially popular services might obscure perspectives of smaller, less mainstream creators and independent services who play a vital role in ensuring that a diverse array of cultural contributions are created and made available to the public.[33] The final rule attempts to account for the diversity of models while prioritizing services with intuitive search capabilities and minimizing resources where a subscription is required to access the search function; the categories to be searched—with the potential exception of certain interactive streaming services, which are statutorily required to be included—are all available at no cost to the user.

To further ensure the specific steps are reasonable and not duplicative, the final rule clarifies that the user only needs to keep progressively searching the categories of sources until she has located the sound recording (*i.e.,* once she finds the sound recording in one category, which evidences commercial exploitation, she can stop searching), or

[17] 17 U.S.C. 1401(c)(3)(A), (B). The final rule also confirms that 37 CFR 201.4 does not govern the filing of NNUs and Pre-1972 Opt-Out Notices. Similarly, the final rule makes a technical edit to reflect that the filing of notices of use of sound recordings under statutory license (17 U.S.C. 112(e), 114) are not governed by 37 CFR 201.4.

[18] NPRM at 1662–63 & n.19 (noting many comments urging this approach). *See* 17 U.S.C. 1401(f)(1)(A); *id.* at 1401(c)(2)(C), (c)(5)(B).

[19] *See Campbell* v. *Acuff-Rose Music, Inc.,* 510 U.S. 569, 584–85 (1994) (noting ''the commercial or nonprofit educational character of a work is 'not conclusive' '' to fair use (quoting *Sony Corp. of Am.* v. *Universal City Studios, Inc.,* 464 U.S. 417, 448 (1984))); H.R. Rep. No. 94–1476, at 66 (1976) (same).

[20] NPRM at 1662–63.

[21] *Id.* at 1663–68; 17 U.S.C. 1401(c)(3)(A).

[22] NPRM at 1663.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 1663, 1669.

[26] Copyright Alliance NPRM Comment at 1 (''The Copyright Alliance commends the Copyright Office for crafting a balanced rule that aligns with the statutory requirements and takes into account the rights of sound recording owners and interests of potential users.'').

[27] Recording Academy NPRM Comment at 1 (the proposed rule ''represents a measured effort to allow potential users to effectively avail themselves'' of the noncommercial use exception; ''applaud[ing the Office] for carefully considering all of the diverse viewpoints that were reflected in the comments . . .'').

[28] Future of Music Coalition (''FMC'') NPRM Comment at 1 (''we are grateful for the thoughtful and realistic approach'').

[29] A2IM & RIAA NPRM Comment at 2.

[30] *See, e.g.,* Copyright Alliance NPRM Comment at 1 (''we applaud the Office for taking the checklist-based approach''); Recording Academy at 2 (''The steps are also thoughtfully sequenced so that a potential user is more likely to find a commercial use quickly and with a minimal amount of effort.'').

[31] EFF NPRM Comment at 1.

[32] A2IM & RIAA NPRM Comment at 2.

[33] NPRM at 1663; *see* FMC Reply at 1–2; Copyright Alliance Initial at 1 (discussing relationship between ''existing general and niche markets''); A2IM & RIAA Reply at 9.

exhausted her search options by searching each of the successive categories without finding the sound recording (*i.e.,* finding no commercial exploitation).[34] Public Knowledge contends that ''the proposed search steps, taken together, are extremely likely to be duplicative of one another.'' [35] The steps in the final rule, however, are purposely listed in recommended order of searching, with the understanding that searches of the Office's database of Pre-1972 Schedules and search engines may render searching on a streaming service or other service (*i.e.,* subsequent search categories) unnecessary.[36]

For example, a search for ''Eleanor Rigby'' in the Copyright Office's database currently returns one result for this Beatles recording, and also provides contact information for Capitol Records as the listed rights owner. A prospective user will therefore learn at step one that the safe harbor is unavailable for this recording, and also how to contact the rights owner to potentially negotiate a permissive use. Similarly, taking Public Knowledge's example, if a user searches ''Don't Fence me In'' by Bing Crosby and the Andrews Sisters on *Google.com*, and the results show the recording being commercially exploited on services offering sound recordings for sale or streaming, the user does not need to continue onto the next steps.[37] But, where search engine results do not show the recording being commercially exploited on a section 1401(c)(1)(A) service, the user should proceed to the next steps, which the Office has concluded, based on the public comments and its own research, lack an ''extreme likelihood of duplication'' for those rarer recordings that are not readily located through the initial steps.[38] The Office also concludes that the steps are generally reasonable, in part because they can be conducted relatively quickly to provide certainty for a potentially long-lasting safe harbor, using publicly available resources ''without creating an account or paying a fee.'' [39]

In addition to the broadly positive comments received and other specific suggestions from other commenters (including broad-ranging comments from NCAI) that are discussed below in reference to particular steps, Public Knowledge raises additional general objections to the proposed rule. Public Knowledge contends that the Office lacks authority to include searches of ''search engines, SoundExchange's ISRC database, and physical product retailers'' as part of a search ''on services offering a comprehensive set of sound recordings for sale or streaming.'' [40] As noted in the NPRM, searches of a search engine and the ISRC lookup tool are expected to serve as a reasonable proxy for searches on a wide array of the statutorily identified services that offer a comprehensive set of sound recordings for sale or streaming, in an effort to avoid duplicative searching.[41] As explained in the NPRM, the Office does not read section 1401(c) so narrowly as to preclude searching resources—such as the SoundExchange ISRC lookup tool or major search engines—that are used ''*to determine whether*'' a Pre-1972 Sound Recording is being commercially exploited on services offering a comprehensive set of sound recordings for sale or streaming.[42] Such cross-platform tools can quickly reveal information relevant to whether a recording is being used on a variety of services unequivocally involved in commercially exploiting these sound recordings. To exclude reliance upon these sources would hamper the Office's ability to craft a smaller list of ''specific, reasonable steps'' that a user may take before filing a NNU.[43] As such, the rule does not stray outside of the statutory language; each step is to be used as a finding aid for the statutory category of ''services offering a comprehensive set of sound recordings for sale or streaming,'' rather than expanding this category. As noted in the NPRM, the Office has concluded that it is more reasonable (and less burdensome, more intuitive, cost-effective, and overall user-friendly) to ask users to conduct one search engine search that captures multiple streaming services, rather than individually searching multiple additional interactive services, and to ask users to search the ISRC database, rather than any of the over 3,100 non-interactive services that are exploiting Pre-1972 Sound Recordings.[44]

Next, and as noted in the NPRM, the noncommercial use exception is not intended to displace the important role of licensed transactions to facilitate the use of Pre-1972 Sound Recordings.[45]

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[34] *See* Hunter NPRM Comment at 2 (''It is unclear if the rule requires the person searching to look at each category, or to search the categories in order until they have found the recording, or exhausted their options.'').

[35] Public Knowledge NPRM Comment at 4–5; Public Knowledge Ex Parte Letter at 1.

[36] NPRM at 1665. *See also* FMC Ex Parte Letter at 1 (suggesting ''that a search is not duplicative just because it yields the same results on multiple platforms—as soon as a positive result is found, the searcher is able to stop.'').

[37] Public Knowledge NPRM Comment at 6. ''Don't Fence Me In'' is currently unlisted in the Office's database, but the top *Google.com* result shows it ''available on'' Play Music, Deezer, and iHeartRadio. Google, *https://www.google.com/search?client=firefox-b-d&q=%22don%27t+fence+me+in%22+andrews+sisters* (last visited Mar. 29, 2019).

[38] Public Knowledge may conflate the likelihood of duplicated results for broadly exploited recordings with the likelihood of duplication for less pervasively available recordings (as shown by its choice to search for ''Billboard number one singles,'' *see* Public Knowledge NPRM Comment at 6). In the former scenario, the user will quickly stop searching, but the rule is necessarily more concerned with the latter cases, as the statute asks users to search multiple ''services,'' suggesting a more robust search is appropriate to capture less broad but nonetheless bona fide commercial exploitations. *See* FMC Ex Parte Letter at 1 (stating the statute was ''written to protect the full diversity of rightsholders, big and small, famous and obscure,'' and that Billboard number one singles ''don't represent a reasonable proxy for the full diversity of impacted recordings'').

[39] EFF NPRM Comment at 2. It is not clear which step Public Knowledge believes requires ''subscription fees''; as explained in the NPRM, the Office took the suggestion of Public Knowledge and others to craft steps that minimize or eliminate the need for users to establish paid subscription accounts, despite persuasive comments from rightsholder groups suggesting that it would not be inappropriate to require such searching before engaging in the proposed uses. *Compare* Public Knowledge NPRM Comment at 7 *with* NPRM at 1664 & n.40. Instead, the Office included steps such as the IRSC database and search engine searching to provide a similar level of comprehensiveness while minimizing potential user burdens.

[40] Public Knowledge NPRM Comment at 2–4.

[41] NPRM at 1665, 1667; *see also* Public Knowledge NPRM Comment at 5 (claiming that searching on Google or the IRSC database tool is ''extremely likely—perhaps practically certain—to find commercial exploitation of any recording that would also appear in a direct search of a streaming service.''). *Cf.* Public Knowledge Initial at 2 (suggesting search requirements should be ''proportional'').

[42] 17 U.S.C. 1401(c)(1)(A) (emphasis added). *Compare* Public Knowledge NPRM Comment at 2 n.1 (''The most generous reading of the search engine and ISRC requirements are that they serve as a reasonable proxy for locating works on 'services offering a comprehensive set of sound recordings for sale or streaming.' '').

[43] For example, a Google search for the 1947 Famous Blue Jay Singer's recording ''I'm Bound for Canaan Land'' reveals the work available through Play Music and Deezer, two services the Office is not requiring to be searched. Similarly, a search for the 1950 Kings of Harmony recording ''God Shall Wipe All Tears Away'' reveals that the recording is available for purchase through Apple Music, Amazon.com, and sites such as singers.com. It appears, however, that those recordings would not presently be returned in a search of the Office's database, Spotify, or authorized YouTube results, and so the search engine step is an expedient way of confirming that the sound recording is in fact being commercially exploited through section 1401(c)(1)(A) services, rather than the Office requiring users to subscribe to and search these additional services.

[44] *See* NPRM at 1665–66. Put another way, given the current marketplace, it does not appear ''reasonable'' for the Office to ignore these additional interactive and non-interactive streaming and for-sale services in crafting the list of steps, and so the Office has picked a reasonable way to search these services, as the statute requires.

[45] *Id.* at 1664. *See, e.g.,* A2IM & RIAA Initial at 1–2 (suggesting that in many cases, voluntary licensing may prove more efficient within a short timeframe than this exception); Copyright Alliance Initial at 2–3; SoundExchange Initial at 2.

Copyright Alliance, supported by A2IM and RIAA, suggests that the Office require a user to directly notify a rights owner if that owner can be located.[46] While the Office strongly supports resolving uses through voluntary agreements, requiring prospective users to generally contact rights owners appears outside the scope of this rulemaking. The statute asks the Office to promulgate a list of ''specific, reasonable steps'' that would constitute a search for a given sound recording in the Office's records and on services offering a comprehensive set of sound recordings for sale or streaming.[47] With the exception of the special case of ethnographic sound recordings, where undisputed comments suggest the available ownership information for these recordings is particularly poor, the Office has concluded that searching the listed services is the more reasonable approach. The Office does, however, encourage users to contact rights owners that can be identified (including even after learning that a work is being commercially exploited) to facilitate permissive uses of these recordings, including for licensed fees.

Finally, the Office reaffirms its commitment to periodically updating this list of specific steps to take into account changes in the music marketplace.[48] A2IM and RIAA request that the Office ''publish [notices of inquiry] at some regular interval seeking public input on whether the list of specific steps'' needs updating, or ''establish a mechanism by which rights owners and/or users can petition the Office to seek review of the existing list of specific steps and consider whether updates are warranted.'' [49] Like other agencies, the Office accepts petitions proposing rule changes.[50] Given the extensive comments aired in this rulemaking, the Office anticipates the current rule to hold for the near term. But should market changes render the list of specific search steps in the final rule unworkable, the Office encourages stakeholders to petition the Office for changes at that time, and the Office will also take initiative to refresh this list should it become aware of the need to adjust in response to material changes in the marketplace.[51]

i. Required Sources To Search

1. Searching the Copyright Office's Database of Pre-1972 Schedules

First, section 1401(c) requires that the search must include searching for the Pre-1972 Sound Recording in the Copyright Office's database of Pre-1972 Schedules.[52] The Office has issued a final rule governing how rights owners may file Pre-1972 Schedules and how they are made publicly available through an online database.[53] For each sound recording, the Pre-1972 Schedule must include the rights owner's name, the sound recording title, and the featured artist, as well as the International Standard Recording Code (''ISRC'') (if known and practicable), and rights owners may opt to include additional information, such as album title, version, and alternate artist name(s).[54]

The Office did not receive any comments suggesting changes to the manner of searching the Office's database of Pre-1972 Schedules, and the final rule adopts this aspect of the proposed rule without substantive change. The final rule requires users to search for the title and featured artist(s) of the Pre-1972 Sound Recording. If the user knows any of the following attributes of the Pre-1972 Sound Recording, the search must also include: Alternate artist name(s), alternate title(s), album title, and the International Standard Recording Code (''ISRC''). The user may also optionally search any other attributes known to the user of the sound recording, such as label or version.

2. Searching With a Major Search Engine

Second, the proposed rule asked the user to search for the Pre-1972 Sound Recording using at least one major search engine, namely: Google, Yahoo!, or Bing, to determine whether the sound recording is being commercially exploited.[55] As noted in the NPRM, users are widely accustomed to conducting internet searches, and such searching is free and may render searching on a streaming service or other service unnecessary.[56]

EFF asks the Office to clarify that ''a reasonable search for commercial exploitation using a search engine does not require an exhaustive reading of every web page returned as a result of such search,'' and that ''reading the first 1–2 pages of results and drawing reasonable inferences from those results, including following those links whose name or accompanying text suggest that commercial exploitation might be found there'' should be sufficient.[57] The Office agrees with this suggestion, with the caveat that depending upon the specific results, it may be reasonable for the user to search more than 1–2 pages (although in other cases these first two pages will likely be sufficient). The Office's regulations and instructions will address this issue, and clarify that the purpose of this search is to determine whether the Pre-1972 Sound Recording is being commercially exploited (*i.e.,* by being offered for sale in download form or as a new (not resale) physical product, or through a streaming service), and not simply whether the internet includes web pages discussing the recording, such as musicological, historical, or other commentary about the work.

3. Searching on a Digital Streaming Service

Third, the proposed rule asked the user to search at least one of the following streaming services, each of which offers tens of millions of tracks: Amazon Music Unlimited, Apple Music, Spotify, or TIDAL. The Office proposed these streaming services because there appeared to be agreement from commenters on these services in particular.[58] These services currently

[46] Copyright Alliance Initial at 2–3, 5. In response to the proposed rule, Copyright Alliance, A2IM, and RIAA contend that while the Office declined to generally require users to contact rights owners directly, the Office adopted a similar requirement with respect to ethnographic Pre-1972 Sound Recordings of Alaska Native or American Indian tribes, by requiring a search through contacting the relevant tribe, association, and/or holding institution. A2IM & RIAA NPRM Comment at 4; Copyright Alliance NPRM Comment at 2. As discussed below, ethnographic field recordings (and the metadata surrounding such recordings) are uniquely situated. *See also* NPRM at 1667–68; U.S. Copyright Office, Federal Copyright Protection For Pre-1972 Sound Recordings 52 (2011), *https://www.copyright.gov/docs/sound/pre-72-report.pdf* (''Pre-1972 Sound Recordings Report'').

[47] 17 U.S.C. 1401(c)(1)(A), (c)(3)(A).

[48] *See* Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 25 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'') (search must be based on ''services available in the market at the time of the search'').

[49] A2IM & RIAA NPRM Comment at 6.

[50] 5 U.S.C. 553(e) (providing that ''[e]ach agency shall give an interested person the right to petition for the . . . amendment . . . of a rule'').

[51] The Office is not at this time exploring ''whether it possesses the authority to institute a limited renewal requirement, under which entries in [Pre-1972 Schedules] would be subject to a periodic renewal in the same vein as DMCA agent designations.'' Public Knowledge Reply at 17; *see* NPRM at 1664, n.53. In response to the NPRM, multiple commenters assert that the statute does not extend such authority. *See, e.g.,* A2IM & RIAA NPRM Comment at 11; Copyright Alliance Comment at 7.

[52] 17 U.S.C. 1401(c)(1)(A)(i), (f)(5)(A).

[53] 84 FR 10679 (Mar. 22, 2019).

[54] 37 CFR 201.35(f).

[55] NPRM at 1665. *See* A2IM & RIAA Initial at 5; Copyright Alliance Initial at 4; FMC Reply at 6 (each suggesting that major search engines should be searched).

[56] NPRM at 1665.

[57] EFF NPRM Comment at 2.

[58] NPRM at 1665 & n.64 (citing comments).

offer some of the largest repertoires of tracks and ''receive digital feeds from the major labels, large indie labels and significant distributors.'' [59] The Office invited public comment on whether Google Play Music and/or Deezer should be included in the list of streaming services, as they also offer large repertoires of tracks. These two services, however, were not identified as possible sources from the majority of commenters.[60]

The Office also invited comment on whether users should be required to search a greater number of streaming services as part of a good faith, reasonable search.[61] In response, some stakeholders contend that a search should include more than one streaming service.[62] A2IM and RIAA propose searching two streaming services, but as part of two searches of services ''grouped into two separate lists,'' one comprising ''the four/five major streaming services,'' and the second comprising services with ''a more 'specialized' repertoire.'' [63] They also contend that Deezer should be included in the group of ''specialized'' streaming services,[64] along with Bandcamp.[65] The comments, however, do not provide any examples of recordings that would not otherwise be found through the list of proposed steps.

After careful consideration, the Office concludes that requiring searches of all these streaming services, or another category of streaming services, would likely be largely redundant. As noted above, a search using a search engine may indicate that the Pre-1972 Sound Recording is available for streaming on various streaming services, rendering further searching unnecessary; Google, for example, appears to index Deezer, Play Music, and Spotify.[66] While these services' repertoires are not identical, rather than requiring users to search additional services, the final rule limits the number of streaming services to be searched, but includes qualitatively different sources to search. In addition, the Office's determination to add YouTube as a separate search step may identify commercial exploitations of less mainstream recordings, reducing the need for a separate search of a streaming service with a ''specialized'' repertoire. As with all of these steps, the Office will consider adjusting this rule if conditions develop that demonstrate a need for adjustment, including adding additional steps (or removing steps), or the amount of services to be searched in each step.

4. Searching YouTube for Authorized Uses

The proposed rule did not request that the user search services comprised of user-generated content, such as YouTube.[67] In response to the NOI, commenters IMSLP.ORG and Public Knowledge maintained that a search should not include services permitting user-uploaded content because such services include unauthorized uses of Pre-1972 Sound Recordings, which do not constitute commercial exploitation ''by or under the authority of the rights owner'' as required by section 1401(c)(1)(A).[68] By contrast, Recording Academy urged the Office to include YouTube.[69] While the Office noted that legislative history states that ''it is important that a user . . . make a robust search, including user-generated services,'' [70] the Office expressed concern that a user conducting a section 1401(c) search on a service permitting user-uploaded content may have no way of knowing if the use of a Pre-1972 Sound Recording is ''by or under the authority of the rights owner,'' a condition required by the statute.[71]

In response to the proposed rule, multiple stakeholders suggest that a good faith, reasonable search should include a separate search for a Pre-1972 Sound Recording on YouTube.[72] While A2IM, RIAA, and Copyright Alliance recognize that YouTube may include unauthorized uses of works,[73] A2IM and RIAA note that ''all of the major record labels and certain indie labels—which collectively account for the vast majority of copyrighted sound recording—currently have licenses with YouTube.'' [74] A2IM, RIAA, and Copyright Alliance explain that YouTube does in many cases indicate when a work has been licensed.[75] Specifically, ''a user can access information that may be useful in helping to identify whether content on YouTube is licensed or claimed simply by clicking on the 'Show More' option that appears below each video and

[59] A2IM & RIAA Initial at 5.

[60] NPRM at 1665.

[61] *Id.*

[62] FMC NPRM Comment at 2 (''We would support including a greater number of streaming services, anticipating that the marketplace may continue to move in a more fragmented and specialized direction in potentially unpredictable ways.''); Recording Academy NPRM Comment at 3 (stating that ''searching only one subscription service is not sufficient''). A spectrum of commenters suggested, however, that the rule should not require a user to search all streaming services. A2IM & RIAA NPRM Comment at 7 (proposing users search on two services); EFF Initial at 4 (contending it is ''[r]easonable to include some subset'' of services); Hunter NPRM Comment at 2 (advocating ''to include as many services as possible in the list of digital streaming services . . . to make sure that the statute allows people to be able to search whatever music streaming service that they have.''). *Cf.* Internet Archive Initial at 1 (suggesting that a good faith, reasonable search ''should entail performing a few high quality searches on a small number of large services rather than performing a low quality search across a large number of services''); Public Knowledge Initial at 5, App. (proposing search of ''no more than one to two'' services). Commenters also noted that searching multiple streaming services might be duplicative. A2IM & RIAA Initial at 7; Public Knowledge Initial at 2.

[63] A2IM & RIAA NPRM Comment at 2.

[64] *Id.*

[65] *See id.* at 2–3 & n.3; *see also* Copyright Alliance NPRM Comment at 3.

[66] The record also suggests it may be premature to include Google Play Music in the regulatory category, which may soon migrate to YouTube Music. *See* A2IM & RIAA NPRM Comment at 2 (stating they do not oppose including Google Play Music, but requesting Google Play Music and YouTube Music be included as ''Google is widely expected to migrate Google Play Music users to YouTube Music sometime in 2019''). *See also* Ara Wagoner, *YouTube Music vs. Spotify: Which is the Better Streaming Music Service?,* Android Central, (June 19, 2018), *https://www.androidcentral.com/youtube-music-vs-spotify* (stating that YouTube Music ''doesn't give out a hard number for the songs in its catalog'').

[67] NPRM at 1668–69.

[68] IMSLP.ORG Reply at 2; Public Knowledge Reply at 11.

[69] Recording Academy Reply at 4.

[70] NPRM at 1668 n.111 (citing Conf. Rep. at 25). Public Knowledge asserts that the document characterized by the Office as a ''Conference Report'' is not valid legislative history and is ''not a persuasive source of authority to anything beyond the personal opinions of Representative Goodlatte.'' Public Knowledge Reply at 8; Public Knowledge NPRM Comment at 7. Neither case cited suggests the wholesale dismissal of subsequent legislative history, as Public Knowledge advocates. *See Quern* v. *Mandley,* 436 U.S. 725, 736 n.10 (1978) (concerning Congress's understanding of a preexisting statute established by a prior Congress); *Covalt* v. *Carey Canada, Inc.,* 860 F.2d 1434, 1438–39 (7th Cir. 1988) (affidavits prepared for litigation by a lobbyist and a Member of the House of Representatives years after the relevant statute was enacted did not constitute legislative history). In this case, the timing of the ''Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees,'' which was signed and issued by the principal House Sponsor and Chairman of Judiciary Committee on October 19, 2018, eight days after the MMA was enacted into law, suggests that it is entirely proper to afford it some interpretive value as legislative history.

[71] NPRM at 1668–69; 17 U.S.C. 1401(c)(1)(A).

[72] A2IM & RIAA NPRM Comment at 4 (''YouTube must be added as an additional, separate step in the list of categories users are required to search.''); Copyright Alliance NPRM Comment at 2 (stating it is ''essential that the Copyright Office add a YouTube search as an additional separate step.''); Recording Academy NPRM Comment at 3 (''Academy strongly urges the Copyright Office to add a search of YouTube as one additional step in the checklist in the final rule.'').

[73] A2IM & RIAA NPRM Comment at 5–6 (stating ''there certainly are instances of unauthorized content on YouTube and other [user-generated content] services''); Copyright Alliance NPRM Comment at 3 (stating ''that user-generated services may include both unauthorized and authorized copies of works and that it may not always be readily apparent to a user whether a work on such a service is being commercially exploited by the authority of the rights owner'').

[74] A2IM & RIAA NPRM Comment at 5.

[75] *Id.;* Copyright Alliance NPRM Comment at 3.

referencing the 'Licensed to YouTube by' field.'' [76] They also indicate that additional recordings may be commercially exploited on YouTube with the authorization of the sound recording rights owner that are unavailable on other services.[77]

Upon review, because the ''Show More'' option will indicate when a work has been licensed ''by or under the authority of the rights owner,'' and because YouTube is a predominant service for the consumption of music in the United States,[78] the final rule includes YouTube as a separate search category for those uses that are authorized by the sound recording rights owner. If a user locates the use of a Pre-1972 Sound Recording and the ''Show More'' option indicates that the work has been licensed, the user should consider the sound recording being commercially exploited.[79] If a user locates the use of a Pre-1972 Sound Recording and the ''Show More'' option does *not* indicate whether the work has been licensed, the user should continue to progressively search in the other search categories until and if the sound recording is found.[80]

5. Searching With the SoundExchange ISRC Lookup Tool

Fifth, the rule asks the user to search for the Pre-1972 Sound Recording using the free online ISRC lookup tool (located at *https://isrc.soundexchange.com/#!/search*) to search SoundExchange's database, which contains information for more than 27 million sound recordings, including Pre-1972 Sound Recordings.[81] As detailed in the NPRM, an overwhelming number of stakeholders representing rights owners initially recommended inclusion of the SoundExchange ISRC lookup tool as an important category of search,[82] and urged inclusion as a mandatory step in response to the proposed rule.[83] As noted above, Public Knowledge objects to including this lookup tool, alleging that it is not itself a ''service[] offering a comprehensive set of sound recordings for sale or streaming.'' [84]

The NPRM, and the above discussion of Public Knowledge's general objections, explain in detail the propriety of including this step as part of a reasonable search. Because the ISRC lookup tool allows users to freely and easily search a deep trove of sound recording information that rights owners themselves have submitted in connection with commercializing those recordings—including on multiple streaming services—the Office again concludes it is desirable and appropriate to include this tool as a step in a sufficient good faith, reasonable search. Requiring a prospective user to search the ISRC lookup tool is thus expected to serve as a reasonable proxy for searches on a wide array of services that offer a comprehensive set of sound recordings for sale or streaming, and specifically, to address commenters' concerns that it is otherwise difficult to determine exploitation by non-interactive services that offer limited user search capability.[85]

Accordingly, the final rule includes the ISRC lookup tool as a mandatory step.

6. Searching Sellers of Physical Product

Sixth, a user should search for the Pre-1972 Sound Recording on at least one major seller of physical product, namely *Amazon.com*, and if the user reasonably believes that the sound recording is of a niche genre such as classical music (including opera) or jazz, one smaller online music store offering recordings in that niche whose repertoires are searchable online, namely: ArkivJazz, ArkivMusic (classical), Classical Archives, or Presto (classical).[86] The Office invited public comment on whether there are additional genres that similarly warrant searching another online music service.[87] In response, A2IM and RIAA stated they ''are not aware of specific online music services or other sources that users could search to find recordings in other niche genres, such as blues and gospel, that are not available in the services already identified [in the proposed rule].'' [88] Accordingly, the final rule adopts this aspect of the proposed rule without substantive change.

Public Knowledge particularly objects to this search step, contending that the

[76] A2IM & RIAA NPRM Comment at 5.

[77] *Id.* (''Including YouTube in the list of categories may also help to address the Office's concern about obscuring the perspective of smaller, less mainstream creators, . . . many of whom post their content on YouTube.''); Copyright Alliance NPRM Comment at 3 (stating that ''in many instances . . . works, though being commercially exploited on YouTube, would not be available on other authorized services''). The Office's own searches bear this out. For example, a search on YouTube for Elizabeth Cotten's 1959 recording ''Freight Train'' or Daniel Santos & Sonora Matancera's 1950 recording ''Carolina Cao'' reveals they are licensed to YouTube by The Orchard, an entity that comments suggested ''does not make its catalog publicly available.'' A2IM & RIAA Initial at 6; *see Elizabeth Cotten—Freight Train,* YouTube (Jan. 27, 2014), *https://www.youtube.com/watch?v=g8UN_6AUgCw;* Daniel Santos & Sonora Matancera—Carolina Cao (©1950), YouTube (Apr. 10, 2010), *https://www.youtube.com/watch?v=jXppKWTaw_I.* Both ''Carolina Cao'' and the recording ''I'm Bound for Canaan Land'' discussed above appear to be currently unavailable on services like Spotify.

[78] *YouTube,* Wikipedia, *https://en.wikipedia.org/wiki/YouTube* (last visited Mar. 29, 2019) (''As of February 2017, there were more than 400 hours of content uploaded to YouTube each minute, and one billion hours of content being watched on YouTube every day. As of August 2018, the website is ranked as the second-most popular site in the world . . .''). *See also* A2IM & RIAA NPRM Comment at 5 (stating that YouTube is ''the predominant user-generated service in the U.S. and abroad''); Recording Academy NPRM Comment at 3 (stating that in 2018, YouTube ''accounted for almost half of all on-demand music streaming globally, more than every other streaming service combined'').

[79] For example, a search for the 1927 recording ''Blue Yodel (T for Texas)'' by Jimmie Rodgers suggests that some results are licensed by RCA/Legacy (T For Texas (Blue Yodel #1)—Jimmie Rodgers, YouTube (Jan. 22, 2013), *https://www.youtube.com/watch?v=X_3NC_kVmhk*), while other results reveal no licensing information after clicking ''Show More'' (*Jimmie Rodgers—Blue Yodel No 1 (T For Texas*), YouTube (Jun. 17, 2006), *https://www.youtube.com/watch?v=qEIBmGZxAhg*). Similar results were returned for other recordings, such as Patsy Montana's 1935 recording ''I Want to Be a Cowboy's Sweetheart'' and Link Wray's 1958 ''Rumble.''

[80] The Office considered that the ''Show More'' window can include licensing information unrelated to the sound recording, such as music publishing or performance licensing information. If a user is unfamiliar with the licensor, she should feel empowered to conduct additional diligence (such as a search engine search) to confirm whether the entity listed is likely to represent sound recording interests (*e.g.,* a record label or distribution entity like CD Baby, TuneCore, or The Orchard). While this commingling of licensing information results is inelegant for purposes of this rulemaking, the Office considered the risks of both false positive and false negative results, and determined that the better course is to ask prospective users to bear these additional and manageable clearance activities, rather than neglect a source that many comments pointed out is actively commercially exploiting relevant recordings under authorization of the rights owner. The Office will consider providing additional guidance on this point to aid users in public education materials.

[81] NPRM at 1666–67; SoundExchange Initial at 2–3.

[82] *See* A2IM & RIAA Initial at 5 (rights owners provide metadata to SoundExchange ''for royalty collection, which is a form of commercial exploitation''); Copyright Alliance Initial at 5 (''SoundExchange's ISRC search tool should be searched, as it provides a vast library of information concerning sound recordings that are submitted by rights owners and their authorized representatives to SoundExchange for the purpose of collecting royalties, which is a form of commercial exploitation''); SoundExchange Initial at 2–14; FMC Reply at 6 (stating that inclusion of a sound recording in this database ''is an unambiguous indicator that a recording is being commercially exploited''); Recording Academy Reply at 3 (''SoundExchange's ISRC Search tool is indispensable to a good faith, reasonable search.'').

[83] A2IM & RIAA NPRM Comment at 6; Copyright Alliance NPRM Comment at 2.

[84] Public Knowledge NPRM Comment at 2–3 & n.1; Public Knowledge Reply at 10 (citing 17 U.S.C. 1401(c)(1)(A)(ii)).

[85] *See* 17 U.S.C. 1401(c)(1)(A); (3). *Compare* Copyright Alliance Reply at 2–3; FMC Reply at 4; *and* Recording Academy Reply at 3 (expressing concerns related to rights owner interests) *with* EFF Initial at 4 *and* Public Knowledge Initial at 2 (expressing concerns related to user perspectives).

[86] NPRM at 1667.

[87] *Id.*

[88] A2IM & RIAA NPRM Comment at 4.

statute's use of the word ''services'' is ''plainly a proxy for digital outlets.'' [89] In support, it references the definition of ''service'' in section 115(e)(29) to claim that searches under section 1401(c) should be limited to outlets ''transmit[ting] music to customers in some electronic form as opposed to providing a market for physical copies.'' [90] The Office does not find this to be the better interpretation of the statute. Section 1401(c) expressly contemplates searches of multiple services, including those offering sound recordings ''for sale'' [91] in addition to streaming. While the Office agrees that the term ''services'' suggests a focus on online sources, as opposed to physical storefronts, it would be improper to ignore evidence of commercial exploitation through sales of physical product.[92] The plain language of the statute is not qualified ''for *digital* sale'' or ''*digital* commercial exploitation.'' Indeed, section 1401(c) does not include the word ''digital'' at all. Nor does legislative history suggest that the section 1401(c) exception is conditioned upon whether there is ''digital'' commercial exploitation of Pre-1972 Sound Recordings.[93] Given this background, it would be odd to read the word ''digital'' into a statutory chapter concerned with recordings that predate the digital age. Further, the definition of ''services'' referenced by Public Knowledge is expressly limited to section 115 and does not apply to section 1401.[94] Finally, assuming *arguendo* that ''services'' is indeed a proxy for ''digital outlet,'' it is not clear why Amazon.com, potentially the largest e-commerce company in the world, would not be considered a ''digital outlet.'' [95]

7. Searches for Ethnographic Pre-1972 Sound Recordings

The NPRM reflected concerns regarding the noncommercial use of ethnographic Pre-1972 Sound Recordings raised by the National Congress of American Indians (''NCAI''), the oldest and largest national organization made up of Alaska Native and American Indian tribal government, and Professors Trevor Reed, Jane Anderson, and Robin Gray, who have worked on legal and cultural issues surrounding pre-1972 ethnographic sound recordings. NCAI asserted that ''[t]he lack of complete and accurate information typically available on copyright interests in ethnographic sound recordings, and the cultural sensitivity of the contents of many ethnographic sound recording collections, merits consideration of special opt-out rules carefully tailored to the specific needs of Native American communities.'' [96] As NCAI explains further:

> Often such recordings are the result of anthropological or ethnographical gatherings of sound recordings, frequently capturing ceremonial or otherwise culturally significant songs. Further, due to the circumstances of how these recordings were conducted—often without any documentation of the free and prior informed consent of the tribal practitioners/performers—tribes today are unaware of much of the content that they potentially hold valid copyright claims over.[97]

Similarly, Professors Reed, Anderson, and Gray explain that ''scholars have extensively documented the inequalities and ethical dilemmas surrounding early ethnographic field recording,'' claiming that ''ownership interests in pre-1972 ethnographic sound recordings are presumed to have vested in and remained with the performers who recorded them under the common-law rule,'' but that unrelated holding institutions (*e.g.,* libraries, archives, museums, and universities) typically possess the master recordings.[98] Those professors suggest that regulations governing the noncommercial use exception under section 1401(c) ''must be carefully tailored to the informational disadvantages Native American tribes and tribal members face as they attempt to locate and protect their rights to ethnographic sound recordings.'' [99]

The Copyright Office is sensitive to the need to ensure that regulations governing the noncommercial use of Pre-1972 Sound Recordings do not adversely impact Alaska Native and American Indian tribes or communities. The Office previously noted that ethnographic field recordings ''are an enormous source of cultural and historical information, and come with their own unique copyright issues,'' [100] and that ''librarians and archivists who deal with ethnographic materials must abide by the cultural and religious norms of those whose voices and stories are on the recordings.'' [101] The Office appreciates that the public ownership record for these recordings may be less developed and less likely to be indexed, and that as a result, searches that are otherwise reasonable for a prospective user may fail to identify that a specific ethnographic recording is being commercially exploited by the rights owner.

Accordingly, for ethnographic Pre-1972 Sound Recordings of Alaska Native or American Indian tribes or communities, the proposed rule asked the user to contact the Alaska Native or Native American tribe and, if known to the user, the relevant holding institution to aid in determining whether the sound recording is being commercially exploited.[102] Specifically, the proposed rule asked the user to make contact by using contact information known to the user if applicable, and also by using the contact information provided in NCAI's tribal directory.[103] If no information is listed or the tribe is unknown to the user, the user would contact NCAI itself.

No commenter opposed this extra search step for ethnographic sound recordings. Indeed, FMC expressed its ''wholehearted[] support [of] the extra step in the search requirement for

[89] Public Knowledge NPRM Comment at 3 n.1.

[90] *Id.* (citing Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. 115–264, 132 Stat. 3676, 3721–22 (codified at 17 U.S.C. 115(e)(29) (2018)).

[91] 17 U.S.C. 1401(c)(1)(A)(ii); *see id.* at 1401(c)(3)(A) (directing the Register to issue regulations identifying ''services offering a comprehensive set of sound recordings for sale or streaming'' to be searched).

[92] *See* Hugh McIntyre, *Report: Physical Albums Sell Significantly Better Than Digital Ones,* Forbes (Mar. 28, 2018), *https://www.forbes.com/sites/hughmcintyre/2018/03/28/physical-albums-sell-significantly-better-than-digital-ones-even-today* (''All forms of physical purchases added up to $1.5 billion in the U.S. last year. CD sales experienced a big hit, losing 10 million sales from the year prior, though at 87.6 million copies moved, they still performed better than their digital counterparts. As has been the case for several years now, vinyl remains the one format of music that must be bought outright that continues to grow by any noticeable measure . . . .'').

[93] *See* Conf. Rep. at 25 (''Subsection (c) creates a process for requesting from rights owners, at their sole discretion, permission to engage in noncommercial uses of pre-1972 sound recordings that are not otherwise commercially exploited.'').

[94] 17 U.S.C. 115(e) (limiting definitions to section 115). Congress's intent to have separate definitions for sections 115 and 1401 is further evidenced by those sections having different definitions of the identical term ''covered activity.'' *Compare* 17 U.S.C. 115(e)(7) *with id.* at 1401(l).

[95] *See* Wikipedia, *https://en.wikipedia.org/wiki/List_of_largest_internet_companies* (listing Amazon.com at #1 on a list of ''largest internet companies'').

[96] NCAI Reply at 1.

[97] *Id.*

[98] Reed, Anderson & Gray Reply at 2.

[99] *Id.* at 3.

[100] Pre-1972 Sound Recordings Report at 52.

[101] *Id.* at 61 (citing Rob Bamberger and Sam Brylawski, Nat'l Recording Preservation Board of the Library of Congress, The State of Recorded Sound Preservation in the United States: A National Legacy at Risk in the Digital Age 19 (2010)).

[102] *See* Reed, Anderson & Gray Reply at 2 (suggesting that the marketplace lacks ''inaccurate and unreliable information about these sound recordings,'' necessitating tribal consultation). For example, the professors' comment suggests that making contact may be valuable to provide title, artist, or other information relevant to a particular recording.

[103] *See Tribal Directory,* Nat'l Cong. of Am. Indians, *http://www.ncai.org/tribal-directory* (last visited Mar. 29, 2019) (providing searchable directory by tribe name, area, and keyword).

ethnographic sound recordings.'' [104] Regarding the proposed regulatory language, NCAI suggests that the final rule define ''Alaska Native or American Indian tribes,'' ''at a minimum,'' to those that are ''federally recognized,'' and to strike the word ''communities'' from any such definition.[105] NCAI also asks that for users who do not know the contact information for a tribe, the final rule direct users to the U.S. Department of the Interior's list of federally recognized tribes, which is published annually in the **Federal Register**,[106] and the Department of the Interior's Bureau of Indian Affairs' tribal leaders directory, which provides contact information for each federally recognized tribe.'' [107]

The Copyright Office appreciates that these issues are nuanced and is committed to addressing them in a sensitive and thoughtful manner. The Office must also be careful, however, not to exceed its regulatory authority, by, for example, prohibiting the use of Pre-1972 Sound Recordings of American Indian and Alaska Native tribes without the relevant tribe's permission, preventing the recordings from entering the public domain, declaring that tribal law governs Pre-1972 Sound Recordings of American Indian and Alaska Native tribes, or imposing a fee requirement on users to pay tribes for conducting commercial exploitation searches.[108] The Office notes, however, that its inability to issue regulations beyond the scope of this rulemaking does not affect the ability of American Indian and Alaska Native tribes to raise such issues before the courts or Congress. The Office further notes that tribes themselves may choose to impose fees on users to offset any administrative burden.

Within the regulatory authority granted to the Office, the Office has adjusted the final rule to reflect NCAI's comments. The final rule defines ''Alaska Native or American Indian tribes'' as those federally recognized by being included in the U.S. Department of the Interior's list of federally recognized tribes. If the user does not locate the relevant sound recording in the Copyright Office's database of Pre-1972 Schedules or other search categories, the final rule asks the user to contact the Alaska Native or Native American tribe and, if known to the user, the relevant holding institution to aid in determining whether the sound recording is being commercially exploited. Specifically, the final rule asks the user to make contact by using contact information known to the user, if applicable, and also by using the contact information provided in the U.S. Department of the Interior's Bureau of Indian Affairs' tribal leaders directory.

The Office believes that this search step is a reasonable burden to ask prospective users of such expressions of cultural heritage in light of the complicated history of some of these sound recordings. The Office also expects that the notification requirement will prove useful to rights owners who wish to exercise discretion to opt out of the noncommercial use by filing notice in the Copyright Office.[109]

ii. Sources Not Required To Be Searched

The Office's proposed rule did not include additional search steps or services proposed by some commenters at the notice of inquiry stage, specifically:

- Additional comprehensive streaming services beyond the one the user elects to search from the proposed rule's list of services
- Terrestrial or internet radio services, including non-interactive services subject to the section 114 license
- The to-be-created Mechanical Licensing Collective database [110]
- Dogstar Radio, which offers searchable playlists from Sirius XM
- Online databases of U.S. performing rights organizations
- Other comprehensive databases offered by private actors (*e.g.,* Songfile, Rumblefish, Songdex, Cuetrak, Crunch Digital)
- IMDB.com
- Video streaming services
- The SXWorks NOI Tools
- Music distribution services (*e.g.,* CDBaby, Tunecore)
- Predominantly foreign music services
- SoundCloud or Bandcamp
- Niche streaming services (*e.g.,* Idagio, Primephonic) [111]

The Office reiterates that the steps in the final rule, including the requirement to search major search engines, may likely reveal some of the very same information contained in the above services, and therefore should result in identifying a vast amount of the Pre-1972 Sound Recordings being commercially exploited at the time searches are conducted. At the same time, the Office recognizes that these locations may provide relevant information to users wishing to obtain additional information, including further information about recordings that are being commercially exploited in order to facilitate permissive transactions. A2IM and RIAA urge the Office to list ''all of the non-mandatory sources in one place'' as additional, optional sources that users may wish to search.[112] While the Office does not believe that regulatory text is the best place for this information to reside, the Office will include these sources in other publications, such as its educational resources.

iii. Search Terms and Strategy

1. General Rule

The proposed rule asked users to search on the title and featured artist(s) of the Pre-1972 Sound Recording in the various search categories.[113] If the user knows any of the following attributes of the Pre-1972 Sound Recording, and the source has the capability for the user to search such attributes, the user should also search: Alternate artist name(s), alternate title(s), album title, and the International Standard Recording Code (''ISRC'').[114] The user was encouraged to optionally search any other attributes known to the user of the sound recording, such as label or version.[115] The Office determined that narrowing a search by these attributes may inform a user's good faith, reasonable determination whether or not a Pre-1972 Sound Recording is being commercially exploited.[116]

The NPRM, responding to a relatively general statement by *IMSLP.org,* invited public comment on whether the final rule should address whether users should be able to use officially-supported APIs to search and locate a Pre-1972 Sound Recording on a streaming service.[117] EFF maintains that the final rule ''should promote and encourage the development of third-party tools and services that can assist in performing a reasonable search for commercial exploitation,'' and clarify that ''searches of the various databases listed in the proposed rule can be conducted through any computer-accessible or human-accessible interface.'' [118] Copyright Alliance, A2IM, and RIAA assert that the final rule does not need to expressly include the use of APIs.[119] Copyright Alliance

[104] FMC NPRM Comment at 2.

[105] NCAI NPRM Comment at 3–4.

[106] *Id.* at 4; *see, e.g.,* 84 FR 1200–05 (Feb. 1, 2019).

[107] NCAI NPRM Comment at 4; *Tribal Leaders Directory,* U.S. Dep't of the Interior, Indian Affairs, *https://www.bia.gov/tribal-leaders-directory* (last visited Mar. 29, 2019).

[108] *Compare* NCAI NPRM Comment at 4–6.

[109] *See* 17 U.S.C. 1401(c)(1)(C).

[110] The Office is open to revisiting the MLC database once it is up and running.

[111] NPRM at 1668.

[112] A2IM & RIAA NPRM Comment at 6.

[113] NPRM at 1669.

[114] *Id.*

[115] *Id.*

[116] *Id.; see* EFF Initial at 3.

[117] NPRM at 1666.

[118] EFF NPRM Comment at 2.

[119] A2IM & RIAA NPRM Comment at 3 (stating that distinctions between a user ''conduct[ing] an otherwise sufficient search of a service like Spotify

Continued

also expresses concern ''that such search capabilities will enable bulk submissions of NNUs, placing a burden on rights owners comparable to the burden placed on individual songwriters and music publishers when reviewing bulk Notices of Intention to Obtain Compulsory License under 17 U.S.C. 115.'' [120] FMC also expressed concern that searches with APIs may ''result in undesirable false negatives'' that may go unnoticed if searches are automated.[121] While not commenting on *IMSLP.org's* statement, the Internet Archive had previously submitted a comment drawing on its own experience ''automating the process of searching for commercial availability at scale,'' noting it was ''more complex than we anticipated,'' but that ''human searchers would generally not make the same sorts of mistakes'' that necessitated refinements in Internet Archive's code.[122] Given these concerns regarding the use of APIs or other automated searching, the final rule does not expressly permit the use of APIs in conducting a good faith, reasonable search.

As discussed above, at EFF's suggestion, the Office amended the rule to clarify the scope of searching via search engines.[123] The final rule is otherwise retained without substantive change.

2. Classical Music Sound Recordings

Because classical music sound recordings require more information to sufficiently identify the sound recording, the proposed rule required the user to search on additional attributes for those types of sound recordings.[124] Under the proposed rule, a user wishing to determine whether a Pre-1972 Sound Recording of classical music is being commercially exploited must search on the composer and opus (*i.e.,* the work's title) and the conductor, featured performers, or ensemble, depending upon the work (*i.e.,* the work's ''featured artist'').[125]

The Office invited public comment on whether other genres of sound recordings require searching additional terms to identify the sound recording sufficiently. A2IM and RIAA confirm that they are not aware of any such additional genres.[126] FMC suggested ''adding film, TV, and theater soundtracks . . . as the quality of metadata implementation is sometimes inconsistent, if generally improving,'' [127] but did not provide examples where the proposed search terms would fail to identify a recording being commercially exploited, or suggest specific search criteria to address soundtrack uses. Without more information, the Office declines to adjust the general criteria and the final rule adopts this aspect of the proposed rule without substantive change. If evidence develops that the adopted search criteria are insufficient, the Office will consider subsequent adjustments to the rule.

3. Remastered Pre-1972 Sound Recordings

In the NPRM, the Office suggested that should the user find a ''remastered'' version of a Pre-1972 Sound Recording through searching in any of the categories listed in the proposed rule, such a finding likely evidences commercial exploitation of the Pre-1972 Sound Recording.[128] The Office noted that ''remastering'' a sound recording may consist of mechanical contributions or contributions that are too minimal to be copyrightable, and that it would thus be prudent for a user to consider a 1948 track that was remastered and reissued in 2015 to qualify as a Pre-1972 Sound Recording.[129]

A2IM and RIAA agree that finding a ''remastered'' version likely evidences commercial exploitation of the Pre-1972 Sound Recording, and ask for the Office's regulations to ''make this a clear presumption.'' [130] The Office has provided clarifying language in its regulatory definition of ''Pre-1972 Sound Recording.''

iv. Other Considerations

1. Searches for Foreign Pre-1972 Sound Recordings

Stakeholders questioned whether the section 1401(c) exception applies to foreign Pre-1972 Sound Recordings (*i.e.,* Pre-1972 Sound Recordings originating outside the United States). As detailed in the NPRM, certain foreign Pre-1972 Sound Recordings have been granted copyright protection in the United States through the Uruguay Round Agreements Act, and the MMA does not reference foreign sound recordings specifically.[131] Noting conflicting comments, the NPRM stated ''[w]hether the noncommercial use exception under section 1401(c) can immunize content actionable under title 17 for restored works that are foreign Pre-1972 Sound Recordings may ultimately be a matter for the courts to resolve.'' [132] In response, A2IM, RIAA, and Copyright Alliance contend the state of the law is clear, and that because foreign sound recordings restored under section 104A ''enjoy full federal copyright protection,'' they are not subject to the section 1401(c) exception for noncommercial use.[133] They urge the Office to communicate to prospective users ''(1) the fact that certain pre-72 sound recordings may be protected by copyright under Section 104(a) and thus not subject to the limitation in 1401(c), and (2) the existence of the Copyright Office's records of [notices of intent to enforce] for restored works, which would show whether a particular pre-72 sound recording is a restored work under Section 104(a).'' [134]

As the NPRM noted, section 1401 provides *sui generis* protection running parallel to any copyright protection afforded to foreign Pre-1972 Sound Recordings under section 104A.[135] While the Office appreciates A2IM, RIAA, and Copyright Alliance's perspective, this rulemaking does not require the Office to interpret whether

using an API that is otherwise voluntarily provided by the service, rather than some other interface to the service (*e.g.,* a desktop or mobile user interface), . . . [do] not seem worth mentioning in regulations''); Copyright Alliance NPRM Comment at 2 (''We see no reason why the rule needs to encourage APIs or other specific means for searching.'').

[120] Copyright Alliance NPRM Comment at 2.

[121] FMC NPRM Comment at 2 (giving example of using the Sonos application to search Apple Music and Spotify for Ethel Merman's recording of ''Everything's Coming Up Roses,'' with the incorrect song being located on Spotify).

[122] Internet Archive Initial at 1.

[123] EFF NPRM Comment at 2.

[124] NPRM at 1669.

[125] *Id.* at 1669, 1676; *see also* Anastasia Tsioulcas, *Why Can't Streaming Services Get Classical Music Right?,* NPR The Record (June 4, 2015, 10:50 a.m.), *https://www.npr.org/sections/therecord/2015/06/04/411963624/why-cant-streaming-services-get-classical-music-right* (last visited Mar. 29, 2019) (describing the metadata conundrum in classical music and difficulty searching streaming services).

[126] A2IM & RIAA NPRM Comment at 4.

[127] FMC NPRM Comment at 2.

[128] NPRM at 1669.

[129] *Id.* (citing U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 803.9(F)(3) (3d ed. 2017) (''*Compendium (Third)*'')).

[130] A2IM & RIAA NPRM Comment at 12.

[131] NPRM at 1670.

[132] *Id.*

[133] A2IM & RIAA NPRM Comment at 12 (''To the extent that a sound recording meets the requirements to be covered by Section 104(A), those recordings enjoy full federal copyright protection, not the sui generis intellectual property right created by Section 1401. Accordingly, they are not subject to use pursuant to the Section 1401(c) exception.''); Copyright Alliance NPRM Comment at 7 (''We disagree that the applicability of 17 U.S.C. 1401(c) to foreign pre-72 sound recordings restored under Section 104(a) is uncertain. Sound recordings restored under Section 104(a) enjoy full federal copyright protection.'').

[134] *See* A2IM & RIAA NPRM Comment at 12. Users may locate notices of intent to enforce by searching the Office's public catalog.

[135] NPRM at 1670; *see* Conf. Rep. at 15; *see also* IFPI Initial at 1–2.

the noncommercial use exception is or is not applicable to these restored foreign sound recordings. Regardless, because protection and enforcement for foreign restored rights is fact-intensive—implicating the specific country, date and location of publication, duration of term in both the United States and the country, and compliance with formalities—the Office reiterates that prospective users of foreign Pre-1972 Sound Recordings should proceed cautiously before relying on the section 1401(c) exception.[136] The Office will provide general guidance in its NNU form instructions regarding the noncommercial use exception and the parallel protection afforded to certain foreign sound recordings, including how to search the Office's records to determine whether a particular Pre-72 Sound Recording is a restored work under section 104A.

2. Reliance on Third-Party Searches

The proposed rule did not permit a user to rely on a search conducted by a third party, unless the third party conducted the search as the user's agent.[137] As explained in the NPRM, reliance upon a third-party search is unlikely to be reasonable because that party may have conducted an inadequate search, or the Pre-1972 Sound Recording may become subject to commercial exploitation after a third party has conducted a search, but before another user desires to use the same sound recording for a noncommercial use under section 1401(c).[138] In addition, a user must certify that she conducted a good faith, reasonable search when submitting an NNU, and a user cannot certify the actions of an unrelated third party.[139]

The Office received one comment from the Copyright Alliance, agreeing with the decision not to permit a user to rely on third-party searches.[140] The final rule adopts this aspect of the proposed rule without substantive change.

3. Timing of Completing a Search Before Filing an NNU

To ensure that search results are not stale, the rule requires the user (or the user's agent) to conduct a search under section 1401(c) no later than 90 days before submitting an NNU with the Office.[141] The Office did not receive any comments regarding this proposed 90-day period, and so the final rule adopts this aspect of the proposed rule without substantive change.

B. Notices of Noncommercial Use (NNUs)

i. Form and Content of NNUs

1. Overview of Final Rule

The final rule largely adopts the provisions of the proposed rule regarding which information must be provided in NNUs, with some adjustments in response to public comment.

Commenters initially disagreed on whether a user should be required to document her search, such as by submitting screen shots from searched websites.[142] Under the proposed rule, users would not have to submit documentation of searches to the Copyright Office as part of conducting a good faith, reasonable search.[143] In response, A2IM and RIAA request that users be required to ''save evidence of their searches for three years from the date of their first use of the work, in much the way that the Internal Revenue Service requires taxpayers to save documentation that supports a tax return for at least three years.''[144] Copyright Alliance suggests that users be required to provide a ''list of the search terms that they used or other evidence of their searches.''[145] Although the final rule does not require users to submit documentation of their searches or provide the search terms used, it adds regulatory language encouraging users to keep records of their searches for at least three years in case of dispute (*i.e.,* if challenged, users may need to provide evidence that they in fact conducted a good faith, reasonable search).[146]

Copyright Alliance, A2IM, and RIAA also request that users be required to list ''the current or last-known rights owner,'' such as a record label, to the extent that the information is known or can be reasonably discovered by the user.[147] Copyright Alliance suggests that such a requirement ''would greatly assist rights owners—particularly those with large catalogs—in being able to determine when one of their recordings is the subject of an NNU,'' and that ''merely listing track title and artist on an NNU will in some cases provide inadequate notice, since some artists may have recorded the same track for different record labels.'' [148] A2IM and RIAA contend that ''where a user is accessing a pre-72 sound recording from an old 33 or 78 rpm record and that record has a label affixed to it, the user should have no trouble identifying the name of the record label that released that recording and including that information in an NNU.'' [149] The Office agrees, noting that in cases where a user possesses a physical copy of the work, she may have ready access to record label and other information that would improve the public record regarding these recordings if included on the NNU (and decrease potential false positive opt-outs by owners of different performances or versions). Accordingly, the final rule requires the user to provide the current or last-known rights owner (*e.g.,* record label), if known.

In addition, the proposed rule stated that an NNU may not include a proposed use for more than one Pre-1972 Sound Recording unless all of the sound recordings include the same featured artist and were released on the same pre-1972 album or other unit of publication.[150] Copyright Alliance, A2IM, and RIAA request that users should not be permitted to include all sound recordings released on a ''greatest hits'' or compilation album, which may include recordings owned by multiple rights owners if the featured artist switched labels throughout her

[136] Conversely, the MMA does not address whether restored sound recordings that were given protection under the URAA, then subsequently fell out of term in their home countries would receive additional *sui generis* protection under section 1401(c). *See also* 84 FR 9053, 9060 (Mar. 13, 2019).

[137] NPRM at 1670.

[138] *Id.; see* A2IM & RIAA Reply at 9.

[139] NPRM at 1670.

[140] Copyright Alliance NPRM Comment at 1.

[141] *See* NPRM at 1670.

[142] *Compare* Copyright Alliance Initial at 6 (user should be required to document the search); *IMSLP.ORG* Reply at 1 (same); A2IM & RIAA Initial at 21 (same); *with* Public Knowledge Reply at 14 (section 1401(c) does not require documentation of the search for the safe harbor to apply); EFF Reply at 4 (same); Wikimedia Foundation Reply at 3 (any documentation only becomes relevant if the adequacy of the search comes into dispute). *See also* FMC Reply at 5 (requiring a user to upload screenshots is an ''inelegant solution'').

[143] NPRM at 1672.

[144] A2IM & RIAA NPRM Comment at 7.

[145] Copyright Alliance NPRM Comment at 4.

[146] *See id.* (''[T]he Copyright Office should provide clear language to users that if a use is subsequently challenged in court, users would need to demonstrate they engaged in a good faith, reasonable search, so they should document their search and retain that documentation.'').

[147] A2IM & RIAA NPRM Comment at 6; Copyright Alliance NPRM Comment at 4; *see also* FMC NPRM Comment at 3 (''It would be very helpful for any available information about the label to be included—this would help avoid false negatives and false positives because of the frequency of re-recordings that artists often made over the course of their careers for multiple rightsholders.'').

[148] Copyright Alliance NPRM Comment at 4; *see also* A2IM & RIAA NPRM Comment at 6 (''Merely listing the track title and artist, where additional information is readily available to the user, would impose an undue and unsustainable burden on rights owners, who would be forced to research each title covered by an NNU to determine if it belonged to them.'').

[149] A2IM & RIAA NPRM Comment at 6.

[150] NPRM at 1671. A ''unit of publication'' exists where multiple works are physically bundled or packaged together and first published as an integrated unit. U.S. Copyright Office, *Circular 34: Multiple Works, https://www.copyright.gov/circs/.*

career.[151] The NPRM recognized that where multiple rights owners own the various Pre-1972 Sound Recordings listed in one NNU, it may be difficult for rights owners as well as prospective users to evaluate opt-outs to proposed noncommercial uses.[152] Accordingly, the final rule states that an NNU may not include a proposed use for more than one Pre-1972 Sound Recording unless all of the sound recordings include the same featured artist and were released on the same pre-1972 album or unit of publication, and in the case of ''greatest hits'' or compilation albums, all of the listed sound recordings on the NNU share the same record label or other rights owner information.[153]

Next, Copyright Alliance, A2IM, and RIAA request that the user must specify the start and end dates of the proposed use, not merely ''when the use will occur.'' [154] The final rule adopts this approach.

In sum, the final rule requires the user to provide:

(1) The user's full legal name, and whether the user is an individual person or corporate entity, including whether the entity is a tax-exempt organization as defined under the Internal Revenue Code;

(2) The title and featured artist(s) of the Pre-1972 Sound Recording desiring to be used; [155]

(3) If known, the current or last-known rights owner (*e.g.,* record label), alternate artist name(s), alternate title(s), album title, and ISRC; and

(4) A description of the proposed noncommercial use, including a summary of the project and its purpose, how the Pre-1972 Sound Recording will be used in the project, the start and end dates of the use, and where the proposed use will occur (*i.e.,* the U.S.-based territory of the use).

Finally, the rule substantively adopts the provision of the proposed rule requiring the individual submitting the NNU to certify that she has appropriate authority to submit the NNU, that the user desiring to make noncommercial use of the Pre-1972 Sound Recording (or the user's agent) conducted a good faith, reasonable search within the last 90 days without finding commercial exploitation of the sound recording, and that all information submitted to the Office in the NNU is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.[156]

Because the specific steps under the final rule are sufficient, but not necessary, to demonstrate that a user has conducted a good faith, reasonable search under the section 1401(c) exception,[157] the NNU certification alternatively allows the user to certify that she conducted a good faith, reasonable search for, but did not find, the sound recording in the Copyright Office's database of indexed schedules listing right owners' Pre-1972 Sound Recordings, or on services offering a comprehensive set of sound recordings for sale or streaming.[158]

2. Determining Whether a Use Is Noncommercial

The section 1401(c) exception applies only to noncommercial uses of Pre-1972 Sound Recordings.[159] Section 1401(c) does not define ''noncommercial,'' and although other parts of title 17 refer to ''commercial'' or ''non-commercial'' uses, nowhere in the statute are they defined terms.[160]

Stakeholders initially disagreed on whether or to what extent the Office should provide guidelines on what constitutes ''noncommercial'' use.[161] In the NPRM, the Office acknowledged that defining ''noncommercial'' in relation to section 1401 is complex,[162] and sought to identify certain touchstones through its public education functions that could help filers and other interested parties evaluate whether a use is noncommercial for purposes of this exception.[163] The NPRM further noted that ''it is not the Office's intention to constrain resolution of gray areas or edge cases through private negotiation or, if necessary, the courts.'' [164]

In response, commenters provided additional insights regarding proposed considerations to be included in the Office's guidelines.[165] For example, the Organization for Transformative Works (''OTW'') noted that the ''guidelines will be extremely useful to individuals and small businesses that don't have familiarity with copyright law or the resources to reach out to someone who does,'' while urging the Office to stress the approach, as articulated in the NPRM, that such guidelines are informational in nature and not hard-and-fast rules.[166] OTW recommended that the Office ''emphasize that the fact that a creator makes money from their art or craft does not necessarily make any particular use commercial,'' and disagreed that ''measurable benefit'' is a workable standard when considering educational uses.[167] In addition, OTW would take the opposite approach of A2IM, RIAA, and FMC, who each strongly advocated that a work being commercially exploited by a platform (*e.g.,* though advertising) must be considered a commercial use of that recording, even if the work was uploaded by a user who does not herself ''monetize'' or otherwise economically benefit from the upload.[168] EFF further suggests that the Office note that while posting on the ''open, accessible internet'' is not a ''private home use,''

[151] *See* A2IM & RIAA NPRM Comment at 7; Copyright Alliance NPRM Comment at 4.

[152] NPRM at 1671.

[153] This requirement is similar to the requirement when registering multiple works under the unit of publication option. *See* U.S. Copyright Office, *Circular 34: Multiple Works, https://www.copyright.gov/circs/* (''The copyright claimant for all of the works claimed in the unit is the same.'').

[154] A2IM & RIAA NPRM Comment at 7; Copyright Alliance NPRM Comment at 5; *see* NPRM at 1671.

[155] As noted above, classical music metadata raises unique issues. For such proposed uses, the prospective user should include information that is similar to the attributes the user is asked to search upon for title and featured artist(s) before claiming the statutory safe harbor.

[156] NPRM at 1671–72.

[157] 17 U.S.C. 1401(c)(4)(B) (''Taking the specific, reasonable steps identified by the Register of Copyrights . . . shall be sufficient, but not necessary, for a filer to satisfy the requirement to conduct a good faith, reasonable search . . . '').

[158] *See* Public Knowledge NPRM Comment at 9 (advocating for same).

[159] 17 U.S.C. 1401(c)(1); Conf. Rep. at 25 (''Subsection (c) applies only to noncommercial uses.'').

[160] *See, e.g.,* 17 U.S.C. 107(1); 108(a)(1), (c), (h)(2)(A); 109(a), (b)(1)(A); 110(4), (8); 506(a); *see also* Kernochan Center Reply at 2–3 (discussing various statutory provisions); 37 CFR 201.40(b)(1)(i)(B) (2018) (regulatory exception for certain uses of motion pictures in noncommercial videos). *But cf.* 17 U.S.C. 901(a)(5) (defining ''commercially exploit'' with respect to mask works).

[161] *Compare* A2IM & RIAA Reply at 6 (''[I]t is vitally important for both users and rights owners that the Office issue guidelines to help users recognize appropriate uses of section 1401(c) and help rights owners assess the NNUs that get filed.''), and FMC Reply at 6 (noting prevalence of incorrect understanding of copyright published by users in connection with user-uploaded content on YouTube), *with* Kernochan Center Reply at 3–4 (providing a run-down of key court opinions with ''differing conclusions as to what constitutes commercial versus noncommercial use''), and Wikimedia Foundation Reply at 3 (cautioning against creating ''complex presumptions'' for specific anticipated fact patterns, and suggesting that terms like ''noncommercial'' are defined in fact-specific contexts that are still being explored by courts).

[162] NPRM at 1672.

[163] *Id.* at 1672–73.

[164] *Id.* at 1672.

[165] *See, e.g.,* A2IM & RIAA NPRM Comment at 11–12; EFF NPRM Comment at 3; FMC NPRM Comment at 3; OTW NPRM Comment at 2.

[166] OTW NPRM Comment at 1.

[167] *Id.* at 2–3.

[168] *See* A2IM & RIAA NPRM Comment at 11–12 (asking for Office's guidelines on noncommercial use to ''make clear that all publicly accessible videos available on YouTube are considered commercial''); FMC NPRM Comment at 3 (stating that ''if a use is not being monetized by the uploader, it may indeed still be commercially exploited by the platform on which it appears''). *See also* OTW NPRM Comment at 3 (''The mere fact that a platform is making money from a user's use should not be enough to make the use commercial.'').

neither is it ''presumptively commercial.'' [169] The Office will consider these comments as it develops a public circular or other general materials to help filers and other interested parties in evaluating whether a use is noncommercial for purposes of the section 1401(c) exception.

ii. Filing of NNUs, Including Copyright Office Review

The final rule adopts the provisions of the proposed rule in regards to the filing of NNUs and the Office's level of review. As with similar types of filings made with the Office, the final rule states that the Office does not review NNUs for legal sufficiency.[170] Rather, the Office's review is limited to whether the formal and legal procedural requirements established under the rule (including completing the required information and payment of the proper filing fee) have been met. For example, as noted in the NPRM, the Office's indexing of an NNU thus does not mean the proposed use in the NNU is, in fact, noncommercial.[171] Users are therefore cautioned to review and scrutinize NNUs to assure their legal sufficiency before submitting them to the Office.

While the Office is adopting the proposed rule with respect to examination, it also clarifies that it does intend to review and reject ''facially deficient'' NNUs as part of its examination process.[172] The Office will review an NNU to confirm that the correct form has been used, that all required information has been provided and is legible, and that the NNU has been properly certified. Such review parallels the Office's examination of documents pertaining to copyright before recording them and making them part of the Office's public record.[173] As stated in the final rule, the Office may reject an NNU that fails to comply with the Office's requirements or instructions. This clarification is expected to assuage rightsholders' concern regarding expenditure of resources responding to facially deficient NNUs, and may also mitigate concern regarding the proposed fee, as discussed below.[174]

iii. Indexing NNUs Into the Copyright Office's Online Database

The final rule largely adopts the provisions of the proposed rule regarding the indexing of NNUs, with some adjustments adopted in response to public comment. Section 1401(c) requires NNUs to be ''indexed into the public records of the Copyright Office.'' [175] As under the proposed rule, the final rule states that an NNU will be considered ''indexed'' once it is made publicly available through the Office's online database of NNUs. The Office has created an online and searchable database of indexed NNUs for rights owners to search.

A2IM and RIAA request the ability to search the Office's database of indexed NNUs by rights owner name, as ''[w]ithout this option, rights owners will be impeded in their ability to exercise their statutory opt-out right.'' [176] This suggestion has been adopted. Rights owners will be able to search on the current or last-known rights owner, as well as the prospective user's name, the title of the sound recording (which includes alternate title(s)), the featured artist(s) (which includes alternate artist name(s)), and the ISRC.[177]

In support of the proposed rule, A2IM and RIAA agree that users cannot rely on NNUs filed by third parties (other than the user's agent).[178] The final rule adopts this provision, as well as the provision stating that a user cannot rely on her own NNU once the proposed term of use ends (*i.e.,* she must conduct a new good faith, reasonable search and file a new NNU). The Office's instructions will further clarify that filers should not rely on information contained in NNUs filed by third parties.[179]

C. Opt-Out Notices

The proposed rule stated that if a rights owner files a timely Pre-1972 Opt-Out Notice, the user must wait one year before filing another NNU for the same or similar use of the Pre-1972 Sound Recording.[180] A2IM and RIAA suggest that ''there should be some finite limit on the number of times a user can file the same/similar request involving the same recording.'' [181] They note that ''it seems unlikely that a bona fide user wishing to make a bona fide noncommercial use would still be seeking permission to use the same recording for the same or a similar purpose two or three years later,'' and that because the initial opt-out filing will identify the rights owner, ''the user will have obtained all of the information necessary to contact the rights owner directly to negotiate a voluntary license.'' [182] They propose limiting a user from filing the same NNU two or three times, or prohibiting the user from filing additional requests for the same/similar use of the same recording at any time more than five years after the initial request was filed.[183] The Office believes that a one-year waiting period is sufficient, and that the Office's database of indexed NNUs should provide rights owners with notice (particularly because the database will list the most recently-indexed NNUs first). Accordingly, the final rule states that if a rights owner files a timely Pre-1972 Opt-Out Notice, the user must wait one year before filing another notice proposing the same or similar use of the same sound recording(s).

As with NNUs and similar filings made with the Office, the final rule states that the Office does not review Pre-1972 Opt-Out Notices for legal sufficiency, but rather whether the formal and legal procedural requirements have been met. The Office will exercise discretion to reject a Pre-1972 Opt-Out Notice that fails to comply with the Office's requirements or instructions, such as failing to provide required information or containing other facially obvious errors. Rights owners are cautioned to review and scrutinize Pre-1972 Opt-Out Notices to assure their legal sufficiency before submitting them to the Office.

D. Fraudulent Filings

Section 1401 contemplates civil penalties for the filing of fraudulent NNUs (*e.g.,* fraudulently describing the proposed use) and for the filing of fraudulent Pre-1972 Opt-Out Notices.[184] In connection with the Office's exercise of the regulatory authority directed under the MMA and its general authority and responsibility to

[169] EFF NPRM Comment at 3 (citation omitted).

[170] *See, e.g.,* 37 CFR 201.4(g); 201.17(c)(2); 201.18(g).

[171] *See* A2IM & RIAA NPRM Comment at 7 (agreeing that the Office's indexing of an NNU does not mean that the proposed use is noncommercial); Copyright Alliance NPRM Comment at 5 (same). The Office will include this caution on the NNU form and/or instructions.

[172] *See* A2IM & RIAA NPRM Comment at 10–11 (expressing concerns regarding facially deficient NNUs).

[173] *See generally* U.S. Copyright Office, *Circular 12: Recordation of Transfers and Other Documents, https://www.copyright.gov/circs/circ12.pdf.*

[174] *See* A2IM & RIAA NPRM Comment at 10–11.

[175] 17 U.S.C. 1401(c)(1)(C).

[176] A2IM & RIAA NPRM Comment at 7.

[177] Similar to the database of Pre-1972 Schedules discussed above, the Office's database of NNUs will allow for wildcard searching by using an asterisk to fill in partial words.

[178] *See id.* at 2.

[179] *See* Copyright Alliance NPRM Comment at 4 (''The Copyright Office should clarify to third parties that it does not verify the validity or accuracy of information on NNUs, and third parties may not rely on the information.'').

[180] NPRM at 1675.

[181] A2IM & RIAA NPRM Comment at 8.

[182] *Id.*

[183] *Id.*

[184] 17 U.S.C. 1401(c)(6)(A); *id.* at 1401(c)(6)(B).

administer title 17,[185] the proposed rule stated that if the Register becomes aware of abusive or fraudulent notices from a certain filer, she shall have the discretion to reject all submissions from that filer under section 1401(c) for up to one year.[186]

Copyright Alliance, A2IM, and RIAA object to imposing such a penalty or one-year ''ban.'' [187] Copyright Alliance asserts that ''a rights owner can opt-out of a[n] NNU without needing any justification, so the circumstances where there would be abuse or fraud present are, at best, exceedingly narrow,'' and that such a '' 'lock-out' mechanism . . . would be unduly prejudicial to rights owners, as it would prevent them from opting out of the use of works they own exclusive rights to.'' [188] While Copyright Alliance, A2IM, and RIAA maintain that the statute does not support a ''ban,'' [189] they acknowledge that civil penalties may not be a sufficient deterrent in all cases.[190]

By including the words ''abuse'' and ''fraud'' in the proposed rule, this aspect of the rule targeted filers *intentionally* filing false or fraudulent filings, not ''bona fide rights owners'' who mistakenly file Pre-1972 Opt-Out Notices containing errors.[191] Indeed, section 1401(c) targets the filers of NNUs and Pre-1972 Opt-Out Notices where such filings are ''willful'' and/or ''knowing'' acts of fraud.[192] The Office anticipates that few filings would reach the level of ''willful'' and/or ''knowing'' acts of fraud to trigger such civil penalties. And as the statute contemplates civil penalties for both fraudulent NNUs and Pre-1972 Opt-Out Notices, the proposed rule similarly sought an evenhanded approach. Moreover, the proposed penalty assumed that the Office has general regulatory authority to discipline repeated, abusive filers (such as filers of spoof notices) who may be undeterred even by threats of monetary penalty, as part of its general obligation and authority to administer this filing.[193]

To accommodate concerns about disproportionally penalizing rightsholders, while providing flexibility should civil penalties be an insufficient deterrent in other cases, the final rule states that if the Register becomes aware of abuse or fraudulent filings by or from a certain filer or user, she has discretion to impose civil penalties ranging up to $1,000 per instance of fraud or abuse, and/or other penalties to deter additional false or fraudulent filings from that filer, including potentially rejecting future submissions for up to one year.

E. Filing Fees

The Copyright Act grants the Office authority to establish, adjust, and recover fees for services provided to the public.[194] The NPRM proposed that the fee to file an NNU or an Opt-Out Notice should be the same as the current fee to record a notice of intention to make and distribute phonorecords under section 115 (''NOI''), as such filings are generally processed similarly by the Office (*i.e.,* at the same internal cost).[195]

Commenters expressed concern that the proposed fees are too high for both users and rights owners. Public Knowledge maintains that ''noncommercial uses will neither be motivated by, nor likely result in, significant or foreseeable financial revenues or other material rewards,'' and so ''unlike the filing fees associated with commercial uses, there is a much higher risk that a substantial fee will be uneconomical for many users and/or otherwise deter the use of this provision.'' [196] Similarly, A2IM, RIAA, Copyright Alliance, and FMC contend that if the Office's review will not serve a ''gatekeeping'' function (*i.e.,* review NNUs for legal sufficiency) rights owners should not have to pay to file Pre-1972 Opt-Out Notices.[197] Copyright Alliance further contends that ''the burden of administering this exception should fall primarily on the user seeking to benefit from it rather than the rights owner seeking to maintain her exclusive rights,'' [198] and A2IM and RIAA suggest that ''the Office should monitor the NNUs to determine what percentage of them are facially deficient and modify the filing fee as appropriate,'' as well as ''determine the actual costs of accepting and indexing opt-out notices at its next opportunity to do so.'' [199]

As noted above, the Office does intend to review NNUs for regulatory compliance, including to confirm that the correct form has been used, that all required information has been provided and is legible, and that the NNU has been properly certified—and will reject NNUs failing to comply with the Office's requirements or instructions. Such review parallels the Office's examination of other documents before they are incorporated into the Office's public record.[200] Accordingly, while the Office does not intend to index ''facially deficient'' NNUs (or Opt-Out notices), this gatekeeping process accordingly involves some provision of resources.

The Office notes that potential filers of both notices have objected to the proposed fees, which the Office has endeavored to set based on the cost of providing the services. In scrutinizing the projected cost for these new filings, the Office also recognizes that NNUs

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[185] *See id.* at 1401(c)(3), (5)(A); *id.* at 701(a), 702.

[186] NPRM at 1674–75.

[187] A2IM & RIAA NPRM Comment at 9 (objecting ''to the penalty to the extent it may limit a bona fide rights owner's ability to file opt-out notices'').

[188] Copyright Alliance NPRM Comment at 5; *see also* A2IM & RIAA NPRM Comment at 10 (''[U]sers and filers are not similarly situated. Most users will not be repeat filers, at least not to the degree that larger rights owners will be, so a ban would not impact them in the same way it would a bona fide rights owner, who may be filing opt-out notices on an ongoing basis.'').

[189] A2IM & RIAA NPRM Comment at 9; Copyright Alliance NPRM Comment at 5.

[190] *See* RIAA *et al.* Ex Parte Letter at 2 (suggesting that Copyright Office should have ''discretion'' to ''address . . . concerns about malicious bad actors that are abusive filers); A2IM & RIAA NPRM Comment at 10 (proposing ''that the Office retain the proposed ban but exempt bona fide rights owners (who could be identified by an Office-issued log-in credential) from the proposed ban''); Copyright Alliance NPRM Comment at 6 (suggesting that ''where the Office believes an opt-out has not come from the bona fide rights owner, that it attempts to correspond with the filer to establish that they own the rights and take appropriate action from there'').

[191] *See* A2IM & RIAA NPRM Comment at 9.

[192] 17 U.S.C. 1401(c)(6)(A); *id.* at 1401(c)(6)(B)(i); *see also id.* at 1401(c)(6)(C).

[193] *Id.* at 702; *id.* at 1401(c)(3)(B); *id.* at 1401(c)(5)(A).

[194] *See id.* at 708. Because they do not involve services specified in section 708(a), the fees proposed in this NPRM are not subject to the adjustment of fees provision in section 708(b).

[195] NPRM at 1675; *see* 37 CFR 201.3(e)(1) ($75). The proposed fee was lower than the cost to record a document for a single title. *See id.* at 201.3(c)(17) ($105). Basing the cost of a service on the cost for a similar service is appropriate. *See* 83 FR 24054, 24059 (May 24, 2018) (proposing setting new fees at the same level for ''analogous'' services). In 2017, Booz Allen Hamilton conducted a study of the Office's most recent fee structure. When asked whether existing rates could be leveraged for new group registration options, it concluded it was appropriate if the work required was of a similar grade and compensation level. Booz Allen Hamilton, *U.S. Copyright Office, Fee Study: Question and Answers* 6 (Dec. 2017), *https://www.copyright.gov/rulemaking/feestudy2018/fee_study_q&a.pdf.*

[196] Public Knowledge NPRM Comment at 9; *see also* Public Knowledge Ex Parte Letter at 1–2.

[197] A2IM & RIAA NPRM Comment at 10–11 (asking the Office to ''either review NNUs for legal sufficiency before indexing them or eliminate the filing fee associated with filing opt-out notices''); Copyright Alliance NPRM Comment at 6; FMC NPRM Comment at 3; *see also* Recording Academy NPRM Comment at 4.

[198] Copyright Alliance NPRM Comment at 6. Copyright Alliance also expressed that the proposed fee to file an NNU ''does not appear excessive,'' as it ''provides a benefit analogous to a free license to use a work otherwise protected by the law.'' Copyright Alliance Ex Parte Letter at 2. If the cost to file an NNU decreases, Copyright Alliance maintains that ''the fees for filing opt-out notices should also be lowered to maintain, at a minimum, parity between the fees.'' *Id.*

[199] A2IM & RIAA NPRM Comment at 11.

[200] *See, e.g.,* U.S. Copyright Office, *Circular 12: Recordation of Transfers and Other Documents, https://www.copyright.gov/circs/circ12.pdf; see generally Compendium (Third)* sec. 2300.

and Pre-1972 Opt-Out Notices will typically include information about only one sound recording, which may require less review than Pre-1972 Schedules and notices of intention to make and distribute phonorecords under section 115, which the Office evaluated as most comparable filings. Accordingly, and to encourage use of these new filing mechanisms in advance of usage data, the filing fees for NNUs and Pre-1972 Opt-Out Notices will be lowered to that which copyright owners pay to file a notice to libraries and archives that a published work in its last twenty years of copyright protection is subject to normal commercial exploitation, another potentially analogous filing that services a similar policy function.[201] In line with its general approach to fee-setting, the Office will consider whether adjustment (including potentially increasing the fees) is necessary after data regarding these filings are available.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.3 as follows:

■ a. Revise paragraph (c)(22).

■ b. Redesignate paragraph (c)(23) as paragraph (c)(24).

■ c. Add new paragraph (c)(23).

■ d. Add paragraph (c)(25).

The additions read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
* * * * * * *	
(22) Notice of noncommercial use of pre-1972 sound recording	50
(23) Opt-out notice of noncommercial use of pre-1972 sound recording	50
* * * * * * *	
(25) Removal of PII from Registration Records	
(i) Initial request, per registration record	130
(ii) Reconsideration of denied requests, flat fee	60
* * * * * * *	

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■ 3. Amend § 201.4 as follows:

■ a. Revise paragraph (b)(3).

■ b. In paragraph (b)(10), remove ''; and'' and add a semicolon in its place.

■ c. In paragraphs (b)(11) through (13), remove the period at the end of each paragraph and add a semicolon in their place.

■ d. Add paragraphs (b)(14) and (15).

The revision and additions read as follows:

§ 201.4 Recordation of transfers and other documents pertaining to copyright.

* * * * *

(b) * * *

(3) Notices of use of sound recordings under statutory license and notices of intention to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 112(e), 114, and 115(b); see §§ 201.18 and 370.2);

* * * * *

(14) Notices of noncommercial use of pre-1972 sound recordings (17 U.S.C. 1401(c)(1)(B); see § 201.37); and

(15) Opt-out notices of noncommercial use of pre-1972 sound recordings (17 U.S.C. 1401(c)(1)(C); see § 201.37).

* * * * *

■ 4. Add § 201.37 to read as follows:

§ 201.37 Noncommercial use of pre-1972 sound recordings.

(a) *General.* This section prescribes the rules under which a user, desiring to make noncommercial use of a pre-1972 sound recording pursuant to 17 U.S.C. 1401(c), conducts a good faith, reasonable search to determine whether the sound recording is being commercially exploited, and if not, files a notice of noncommercial use with the Copyright Office. This section also prescribes the rules under which a rights owner of a pre-1972 sound recording identified in a notice of noncommercial use may file an opt-out notice opposing a proposed use of the sound recording, pursuant to 17 U.S.C. 1401(c)(1)(C).

(b) *Definitions.* For purposes of this section:

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 1401.

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972. A post-1972 remastered version of a pre-1972 sound recording that consists of mechanical contributions or contributions that are too minimal to be copyrightable qualifies as a pre-1972 sound recording for purposes of this section.

(3) For pre-1972 sound recordings of classical music, including opera:

(i) The *title* of the pre-1972 sound recording means, to the extent applicable and known by the user, any and all title(s) of the sound recording and underlying musical composition known to the user, and the composer and opus or catalogue number(s) of the underlying musical composition; and

(ii) The *featured artist(s)* of the pre-1972 sound recording means, to the extent applicable and known by the user, the featured soloist(s); featured ensemble(s); featured conductor; and any other featured performer(s).

(4) An *Alaska Native or American Indian tribe* is a tribe included in the U.S. Department of the Interior's list of federally recognized tribes, as published annually in the **Federal Register**.

(c) *Conducting a good faith, reasonable search.* (1) Pursuant to 17 U.S.C. 1401(c)(3)(A), a user desiring to

[201] 37 CFR 201.3(d)(13) (stating fee for notice to libraries and archives for a single title is $50); 17 U.S.C. 108(h)(2). The final rule makes a technical edit to 37 CFR 201.3(c) to correct an inadvertent error.

make noncommercial use of a pre-1972 sound recording should progressively search for the sound recording in each of the categories below until the user finds the sound recording. If the user finds the sound recording in a search category, the user need not search the subsequent search categories. If the user does not find the pre-1972 sound recording after searching each of the categories below, her search is sufficient for purposes of the safe harbor in 17 U.S.C. 1401(c)(4), establishing that she made a good faith, reasonable search without finding commercial exploitation of the sound recording by or under the authority of the rights owner. The categories are:

(i) Searching the Copyright Office's database of indexed schedules listing right owners' pre-1972 sound recordings (*https://www.copyright.gov/music-modernization/pre1972-soundrecordings/search-soundrecordings.html*);

(ii) Searching at least one major search engine, namely Google, Yahoo!, or Bing, to determine whether the pre-1972 sound recording is being offered for sale in download form or as a new (not resale) physical product, or is available through a streaming service;

(iii) Searching at least one of the following streaming services: Amazon Music Unlimited, Apple Music, Spotify, or TIDAL;

(iv) Searching YouTube, to determine whether the pre-1972 sound recording is offered under license by the sound recording rights owner (*e.g.,* record label or distribution service);

(v) Searching SoundExchange's repertoire database through the SoundExchange ISRC lookup tool (*https://isrc.soundexchange.com/#!/search*);

(vi) Searching at least one major seller of physical product, namely Amazon.com, and if the pre-1972 sound recording is of classical music or jazz, searching a smaller online music store that specializes in product relative to that niche genre, namely: ArkivJazz, ArkivMusic, Classical Archives, or Presto; in either case, to determine whether the pre-1972 sound recording is being offered for sale in download form or as a new (not resale) physical product; and

(vii) For pre-1972 ethnographic sound recordings of Alaska Native or American Indian tribes, searching, if such contact information is known to the user, by contacting the relevant Alaska Native or American Indian tribe and the holding institution of the sound recording (such as a library or archive) to gather information to determine whether the sound recording is being commercially exploited. If this contact information is not previously known to the prospective user, the user should use the information provided by the U.S. Department of the Interior's Bureau of Indian Affairs' Tribal Leaders directory, which provides contact information for each federally recognized tribe.

(2) A search under paragraph (c)(1) of this section must include searching the title of the pre-1972 sound recording and its featured artist(s). If the user knows any of the following attributes of the sound recording, and the source being searched has the capability to search any of these attributes, the search must also include searching: alternate artist name(s), alternate title(s), album title, and the International Standard Recording Code (''ISRC''). A user is encouraged, but not required, to search additional known attributes, such as the label or version. A user searching using a search engine should draw reasonable inferences from the search results, including following those links whose name or accompanying text suggest that commercial exploitation might be found there, and reading additional pages of results until two consecutive pages return no such suggestive links. A user need not read every web page returned in a search result.

(3) A search under paragraph (c)(1) of this section must be conducted no later than 90 days of the user (or her authorized agent) filing a notice of noncommercial use under paragraph (d)(1) of this section to be sufficient for purposes of the safe harbor in 17 U.S.C. 1401(c)(4).

(4) For purposes of the safe harbor in 17 U.S.C. 1401(c)(4), a user cannot rely on:

(i) A search conducted under paragraph (c)(1) of this section by a third party who is not the user's authorized agent; or

(ii) A notice of noncommercial use filed under paragraph (d)(1) of this section by a third party (who is not the user's authorized agent).

(5) A user is encouraged to save documentation (*e.g.,* screenshots, list of search terms) of her search under paragraph (c)(1) of this section for at least three years in case her search is challenged.

(d) *Notices of noncommercial use*—(1) *Form and submission.* A user seeking to comply with 17 U.S.C. 1401(c)(1) (or her authorized agent) must submit a notice of noncommercial use identifying the pre-1972 sound recording that the user intends to use and the nature of such use using an appropriate form and instructions provided by the Copyright Office on its website. The Office may reject any submission that fails to comply with the requirements of this section.

(2) *Content.* A notice of noncommercial use shall contain the following:

(i) The user's full legal name, and whether the user is an individual person or corporate entity, including whether the entity is a tax-exempt organization as defined under the Internal Revenue Code. Additional contact information, including an email address, may be optionally provided.

(ii) The title and featured artist(s) of the pre-1972 sound recording desiring to be used.

(iii) If any are known to the user, the current or last-known rights owner (*e.g.,* record label), alternate artist name(s), alternate title(s), album title, and International Standard Recording Code (''ISRC'').

(iv) The user may include additional optional information about the pre-1972 sound recording as permitted by the Office's form or instructions, such as the year of release.

(v) A description of the proposed noncommercial use, including a summary of the project and its purpose, how the pre-1972 sound recording will be used in the project, the start and end dates of the use, and where the proposed use will occur (*i.e.,* the U.S.-based territory of the use). The user may include additional optional information detailing the proposed use, such as the tentative title of the project, the playing time of the pre-1972 sound recording to be used as well as total playing time of the project, a description of corresponding visuals in the case of audiovisual uses, and whether and how the user will credit the sound recording title, featured artist, and/or rights owner in connection with the project.

(vi) A certification that the user searched but did not find the pre-1972 sound recording in a search conducted under paragraph (c) of this section, or else conducted a good faith, reasonable search for, but did not find, the sound recording in the Copyright Office's database of indexed schedules listing right owners' pre-1972 sound recordings, or on services offering a comprehensive set of sound recordings for sale or streaming.

(vii) A certification that the individual submitting the notice of noncommercial use has appropriate authority to submit the notice, that the user desiring to make noncommercial use of the pre-1972 sound recording (or the user's authorized agent) conducted a search under paragraph (c) of this section or else conducted a good faith, reasonable search under 17 U.S.C. 1401(c)(4), within the last 90 days without finding

commercial exploitation of the sound recording, and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(3) Noncommercial use of a pre-1972 recording under this section is limited to use within the United States.

(4) A notice of noncommercial use may not include proposed use for more than one pre-1972 sound recording unless all of the sound recordings include the same featured artist(s) and were released on the same pre-1972 album or other unit of publication. In the case of ''greatest hits'' or compilation albums, all of the sound recordings listed on a notice must also share the same record label or other rights owner information, as listed on the notice.

(5) The Copyright Office will assign each indexed notice of noncommercial use a unique identifier to identify the notice in the Office's public records.

(6) *Legal sufficiency.* (i) The Copyright Office does not review notices of noncommercial use submitted under paragraph (d)(1) of this section for legal sufficiency. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. The fact that the Office has indexed a notice is not a determination by the Office of the notice's validity or legal effect. Indexing by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for making a noncommercial use of a pre-1972 sound recording have not been met, including before a court of competent jurisdiction. Users are therefore cautioned to review and scrutinize notices of noncommercial use to assure their legal sufficiency before submitting them to the Office.

(ii) If a rights owner does not file an opt-out notice under paragraph (e) of this section, when the term of use specified in the notice of noncommercial use ends, the user must cease noncommercial use of the pre-1972 sound recording for purposes of remaining in the safe harbor in 17 U.S.C. 1401(c)(4). Should the user desire to requalify for the safe harbor with respect to that same recording, the user must conduct a new search and file a new notice of noncommercial use under paragraphs (c) and (d) of this section, respectively.

(7) *Filing date.* The date of filing of a notice of noncommercial use is the date when a proper submission, including the prescribed fee, is received in the Copyright Office. The filing date may not necessarily be the same date that the notice, for purposes of 17 U.S.C. 1401(c)(1)(C), is indexed into the Office's public records.

(8) *Fees.* The filing fee to submit a notice of noncommercial use pursuant to this section is prescribed in § 201.3(c).

(9) *Third-party notification.* A person may request timely notification of filings made under paragraph (d)(1) of this section by following the instructions provided by the Copyright Office on its website.

(e) *Opt-out notices*—(1) *Form and submission.* A rights owner seeking to comply with 17 U.S.C. 1401(c)(1)(C) (or her authorized agent) must file a notice opting out of a proposed noncommercial use of a pre-1972 sound recording filed under paragraph (d)(1) of this section using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with the requirements of this section, or any relevant instructions or guidance provided by the Office.

(2) *Content.* An opt-out notice use shall contain the following:

(i) The user's name, rights owner's name, sound recording title, featured artist(s), an affirmative ''yes'' statement that the rights owner is opting out of the proposed use, and the unique identifier assigned to the notice of noncommercial use by the Copyright Office. Additional contact information for the rights owner, including an email address, may be optionally provided.

(ii) A certification that the individual submitting the opt-out notice has appropriate authority to submit the notice and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(iii) Submission of an opt-out notice does not constitute agreement by the rights owner or the individual submitting the opt-out notice that the proposed use is in fact noncommercial. The submitter may choose to comment upon whether the rights owner agrees that the proposed use is noncommercial use, but failure to do so does not constitute agreement that the proposed use is in fact noncommercial.

(3) Where a pre-1972 sound recording has multiple rights owners, only one rights owner must file an opt-out notice for purposes of 17 U.S.C. 1401(c)(5).

(4) If a rights owner files a timely opt-out notice under paragraph (e)(1) of this section, a user must wait one year before filing another notice of noncommercial use proposing the same or similar use of the same pre-1972 sound recording(s).

(5) *Legal sufficiency.* The Copyright Office does not review opt-out notices submitted under paragraph (e)(1) of this section for legal sufficiency. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize opt-out notices to assure their legal sufficiency before submitting them to the Office.

(6) *Filing date.* The date of filing of an opt-out notice is the date when a proper submission, including the prescribed fee, is received in the Copyright Office.

(7) *Fee.* The filing fee to submit an opt-out notice pursuant to this section is prescribed in § 201.3(c).

(f) *Fraudulent filings.* If the Register becomes aware of abuse or fraudulent filings under this section by or from a certain filer or user, she shall have the discretion to impose civil penalties up to $1,000 per instance of fraud or abuse, and/or other penalties to deter additional false or fraudulent filings from that filer, including potentially rejecting future submissions from that filer for up to one year.

Dated: April 1, 2019.

Karyn A. Temple,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–06883 Filed 4–8–19; 8:45 am]

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