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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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NATIONAL MEDIATION BOARD

5 CFR Chapter CI

[Docket No. C–7188]

RIN 3209–AA47

Supplemental Standards of Ethical Conduct for Employees of the National Mediation Board

AGENCY: National Mediation Board.

ACTION: Final rule.

SUMMARY: The National Mediation Board (NMB or Board), with the concurrence of the U.S. Office of Government Ethics (OGE), is issuing a final rule for employees of the NMB that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The supplemental regulation requires NMB employees to obtain approval before engaging in outside employment.

DATES: This final rule is effective May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2018, the NMB, with OGE's concurrence, published an interim final rule in the **Federal Register**, 83 FR 54861, adopting agency-specific supplemental regulations requiring NMB employees to obtain approval before engaging in outside employment. The interim final rule provided a 60 day comment period, which ended on December 31, 2018. The NMB did not receive any comments. The rationale for the interim final rule, which the NMB is now adopting as final, is explained in the preamble at: *https://www.federalregister.gov/documents/2018/11/01/2018-23548/supplemental-standards-of-ethical-conduct-for-employees-of-the-national-mediation-board.*

II. Matters of Regulatory Procedure

Executive Order 12866

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, the NMB certifies that these regulatory changes will not have a significant impact on small business entities. This rule will not have any significant impact on the quality of the human environment under the National Environmental Policy Act.

Paperwork Reduction Act

The NMB has determined that the Paperwork Reduction Act does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 10101

Conflicts of interests, Government employees.

Dated: May 1, 2019.

By direction of the Board.

Mary Johnson,

General Counsel, National Mediation Board.

Emory A. Rounds, III,

Director, U.S. Office of Government Ethics.

Chapter CI—National Mediation Board

PART 10101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL MEDIATION BOARD

■ Accordingly, the interim rule adding 5 CFR chapter CI, consisting of part 10101, which was published at 83 FR 54861 on November 1, 2018, is adopted as final without change.

[FR Doc. 2019–11163 Filed 5–28–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0235; Special Conditions No. 25–747–SC]

Special Conditions: Airbus Model A330 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A330 series airplane. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is seats with inertia locking devices. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin and Airframe Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2019, Airbus applied for a change to Type Certificate No. A46NM for seats with inertia locking devices in Model A330 series airplanes. The Model A330 series airplane is a twin-engine, transport-category airplane with a maximum takeoff weight of 533,518 pounds and seating for 440 passengers.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A330

series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A46NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Airbus Model A330 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, Airbus Model A330 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

Airbus Model A330 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices (ILD).

Discussion

Airbus will install, in Model A330 series airplanes, Thompson Aero Seating Ltd. passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing loading conditions specified in 14 CFR 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event) to lock the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency landing event. Each seat place incorporates two ILDs, one on either side of the seat pan. Only one ILD is required to hold an occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing, and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but nominally predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. A seat using ILD technology, however, may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury output being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.561–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the ILD deployment setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t_1 is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.561–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Conditions 1 through 5 address ensuring that the ILD activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

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

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–02–SC for the Airbus Model A330 series airplane. This document was published in the **Federal Register** on April 16, 2019 (84 FR 15531). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A330 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating inertia locking devices (ILD)s must meet the following:

1. *Level of Protection Provided by ILD*—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat

occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. *Protection Provided Below and Above the ILD Actuation Condition*—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. *Protection Over a Range of Crash Pulse Vectors*—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. *Protection During Secondary Impacts*—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. *Protection of Occupants other than 50th Percentile*—Protection of occupants for a range of stature from a two-year-old child to a ninety-five percentile male must be shown.

6. *Inadvertent Operation*—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. *Installation Protection*—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. *Reliability*—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging or drying of lubricants, and corrosion.

9. *Maintenance and Functional Checks*—The design, installation, and operation of the ILD must be such that it is possible to functionally check the device in place. Additionally, a functional-check method and a maintenance-check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. *Release Function*—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Des Moines, Washington, on May 22, 2019.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–11071 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0726; Product Identifier 2017–SW–097–AD; Amendment 39–19638; AD 2019–09–04]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A. (Type Certificate Previously Held by Finmeccanica S.p.A., AgustaWestland S.p.A) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Leonardo S.p.A. (Type Certificate previously held by Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW109SP helicopters. This AD requires inspecting and altering the rescue hoist. This AD was prompted by a report of a damaged hoist cable that detached after load application. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective July 3, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 3, 2019.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0726.

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–2018–0726; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@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 certain Leonardo S.p.A. (formerly Finmeccanica S.p.A, AgustaWestland S.p.A.) Model AW109SP helicopters. The NPRM published in the **Federal Register** on August 21, 2018 (83 FR 42230). The NPRM was prompted by a report of a damaged hoist cable that detached after load application. The NPRM proposed to require inspecting and altering the rescue hoist.

We are issuing this AD to address chafing of a rescue hoist cable. This condition could result in detachment of an external load and subsequent injury to persons being lifted.

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2017–0025, dated February 14, 2017, to correct an unsafe condition for certain Leonardo S.p.A. (formerly Finmeccanica S.p.A. and AgustaWestland S.p.A.) Model AW109SP helicopters. EASA advises that a hoist cable became snagged behind a hoist handle assembly nut and broke during a dummy load application. EASA further advises that this condition could result in detachment of an external load, and subsequent personal injury or injury to persons on the ground. To address this unsafe condition, the EASA AD requires inspecting the hoist cable, modifying the rescue hoist handle, and amending the rescue hoist pre-flight inspection described in the rotorcraft flight manual.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. One commenter commented in support of the NPRM.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to our bilateral agreement with the European Union, EASA has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information Under 1 CFR Part 51

Leonardo S.p.A. issued Leonardo Helicopters Bollettino Tecnico No. 109SP–110, dated February 13, 2017, which contains procedures for inspecting the hoist handle, the passenger-side cabin doorframe, and the hoist cable. This service information also specifies replacing the attaching hardware on the rescue hoist handle and adding a temporary pre-flight check of the hoist cable to the rotorcraft flight manual.

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.

Differences Between This AD and the EASA AD

The EASA AD requires amending the rotorcraft flight manual by adding a daily rescue hoist cable preflight inspection, this AD does not since the actions in this AD correct the unsafe condition.

Costs of Compliance

We estimate that this AD affects 30 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD, based on an average labor rate of $85 per hour.

Inspecting the hoist handle assembly, cabin doorframe, and hoist cable requires about 2 hours, for a cost of $170 per helicopter and $5,100 for the U.S. fleet. Replacing the hardware on the hoist handle assembly requires about 1 hour and required parts costs are minimal, for a cost of $85 per helicopter and $2,550 for the U.S. fleet.

If required, replacing a hoist cable requires about 3 hours and required parts cost $3,150, for a cost per helicopter of $3,405.

According to Leonardo Helicopters' service information, 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 by Leonardo Helicopters. Accordingly, 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.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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):

2019–09–04 Leonardo S.p.A. (Type Certificate Previously Held by Finmeccanica S.p.A., AgustaWestland S.p.A.): Amendment 39–19638; Docket No. FAA–2018–0726; Product Identifier 2017–SW–097–AD.

(a) Applicability

This AD applies to Leonardo S.p.A. (Type Certificate previously held by Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW109SP helicopters, certificated in any category, with a rescue hoist part number 109–B810–16–101 or 109–B810–16–201 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as chafing of a rescue hoist cable. This condition could result in detachment of an external load and subsequent injury to persons being lifted.

(c) Effective Date

This AD is effective July 3, 2019.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service (TIS) or before the next hoist operation, whichever occurs first, inspect the rescue hoist handle assembly and the upper part of the cabin doorframe for chafing. The inspection area of the cabin doorframe is depicted in Figure 3 of Leonardo Helicopters Bollettino Tecnico No. 109SP–110, dated February 13, 2017 (BT 109SP–110). Examples of chafing are shown in Figures 10 and 11 of BT 109SP–110. If there is any chafing, before further flight, repair the chafed areas and inspect the first 6 meters (20 feet) of the hoist cable as follows:

(i) Measure the diameter of the hoist cable as described in the Compliance Instructions, Part I, paragraphs 3.4.1 through 3.4.2 of BT 109SP–110.

(ii) Average the two measurements at each location. If at any location the diameter of the hoist cable is less than 4.7 mm (0.185 inch), before the next hoist operation, remove the hoist cable from service.

(iii) Inspect the hoist cable for broken wires, kinks, bird caging, flattened areas, abrasion, and necking, referencing the examples shown and depicted in Figures 5 through 9 of BT 109SP–110. If there are any broken wires, kinks, bird caging, flattened areas, abrasion, or necking, before the next hoist operation, remove the hoist cable from service.

(2) Within 25 hours TIS, replace the rescue hoist handle attaching hardware as described in the Compliance Instructions, Part II, paragraphs 3 through 6, of BT 109SP–110.

(f) Special Flight Permits

A one-time special flight permit may be granted provided that the hoist is not used.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASWFTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017–0025, dated February 14, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* in Docket No. FAA–2018–0726.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) Leonardo Helicopters Bollettino Tecnico No. 109SP–110, dated February 13, 2017.

(ii) [Reserved]

(3) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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/ibrlocations.html.*

Issued in Fort Worth, Texas, on May 15, 2019.

Helene Gandy,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–10773 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2017–0008; 190E1700D2 ETISF0000.EAQ000 EEEE500000]

RIN 1014–AA37

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems; Corrections

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Correcting amendments.

SUMMARY: On September 28, 2018, the Bureau of Safety and Environmental Enforcement (BSEE) published a final rule that revised certain BSEE-administered regulations. This document corrects the final regulations.

DATES: Effective on May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, Regulations and Standards Branch, 703–787–1775 or by email: *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION: BSEE published the final rule: Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems (1014–AA37), on September 28, 2018 (83 FR 49216). This correction to that publication is necessary to modify the amendatory instructions in the regulatory text of the final rule related to the formatting of certain tables. The Office of the Federal Register has informed BSEE that it must remove the instruction to print certain tables in the final regulatory text as photographs in the **Federal Register** publication in order to facilitate the printing of the final regulatory text in the Code of Federal Regulations by the Government Publishing Office. Accordingly, BSEE publishes this correction so that the tables as printed in the **Federal Register** are formatted to be more readily susceptible to publication in the Code of Federal Regulations. This correction is clerical in nature only, and does not impact the substantive requirements of the final rule.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Continental shelf—mineral resources, Continental shelf—rights-of-way, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Reporting and recordkeeping requirements, Sulfur.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

Subpart H—Oil and Gas Production Safety Systems

■ 2. Revise § 250.842 to read as follows:

§ 250.842 Approval of safety systems design and installation features.

(a) Before you install or modify a production safety system, you must submit a production safety system application to the District Manager. The District Manager must approve your production safety system application before you commence production through or otherwise use the new or modified system. The application must include the design documentation prescribed as follows:

You must submit:	Details and/or additional requirements:
(1) Safety analysis flow diagram (API RP 14C, Annex B) and Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, section 6.3.3) (incorporated by reference in § 250.198)	Your safety analysis flow diagram must show the following: (i) Well shut-in tubing pressure; (ii) Pressure relieving device set points; (iii) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors, and metering devices; (iv) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (v) Size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and API RP 505 (both incorporated by reference in § 250.198); and (vi) Piping sizes and maximum allowable working pressures as determined in accordance with API RP 14E (incorporated by reference in § 250.198), including the locations of piping specification breaks.
(2) Electrical one-line diagram;	Showing elements including generators, circuit breakers, transformers, bus bars, conductors, automatic transfer switches, uninterruptable power supply (UPS) and associated battery banks, dynamic (motor) loads, and static loads (*e.g.,* electrostatic treater grid, lighting panels). You must also include a functional legend.
(3) Area classification diagram;	A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500 or API RP 505 (both incorporated by reference in § 250.198). The plan must contain: (i) All major production equipment, wells, and other significant hydrocarbon and class 1 flammable sources, and a description of the type of decking, ceiling, walls (*e.g.,* grating or solid), and firewalls; and (ii) The location of generators and any buildings (*e.g.,* control rooms and motor control center (MCC) buildings) or major structures on the platform.
(4) A piping and instrumentation diagram, for new facilities;	A detailed flow diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.
(5) The service fee listed in § 250.125;	The fee you must pay will be determined by the number of components involved in the review and approval process.

(b) You must develop and maintain the following design documents and make them available to BSEE upon request:

Diagram:	Details and/or additional requirements:
(1) Additional electrical system information;	(i) Cable tray/conduit routing plan that identifies the primary wiring method (*e.g.,* type cable, cable schedule, conduit, wire); and (ii) Panel board/junction box location plan, if this information is not shown on the area classification diagram required in paragraph (a)(3) of this section.
(2) Schematics of the fire and gas-detection systems;	Showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; and the method used for detection.
(3) Revised piping and instrumentation diagram for existing facilities;	A detailed flow diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.

(c) In the production safety system application, you must also certify the following:

(1) That all electrical systems were designed according to API RP 14F or API RP 14FZ, as applicable (incorporated by reference in § 250.198);

(2) That the design documents for the mechanical and electrical systems that you are required to submit under paragraph (a) of this section are sealed by a licensed professional engineer. For modified systems, only the modifications are required to be sealed by a licensed professional engineer(s). The professional engineer must be licensed in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and

(3) That a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the facility.

(d) Within 90 days after placing new or modified production safety systems in service, you must submit to the District Manager the as-built diagrams for the new or modified production safety systems outlined in paragraphs (a)(1), (2), and (3) of this section. You must certify in an accompanying letter that the as-built design documents have been reviewed for compliance with applicable regulations and accurately represent the new or modified system as installed. The drawings must be clearly marked ''as-built.''

(e) You must maintain approved and supporting design documents required under paragraphs (a) and (b) of this section at your offshore field office nearest the OCS facility or at other locations conveniently available to the District Manager. These documents must be made available to BSEE upon request and must be retained for the life of the facility. All approved designs are subject to field verifications.

■ 3. Amend § 250.851 by revising paragraph (a)(2) to read as follows:

§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.

(a) * * *

Item name	Applicable codes and requirements
* * * * * * *	
(2) Existing uncoded pressure and fired vessels: (i) With an operating pressure greater than 15 psig; and (ii) That are not code stamped in accordance with the ASME Boiler and Pressure Vessel Code.	Must be justified and approval obtained from the District Manager for their continued use.
* * * * * * *	

* * * * *

■ 4. Amend § 250.873 by revising paragraph (b)(3) to read as follows:

§ 250.873 Subsea gas lift requirements.

* * * * *

(b) * * *

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a				In addition, you must
	ANSI/API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	ANSI/API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
*	*	*	*	*	*
(3) Pipeline risers via a gas-lift line contained within the pipeline riser.	Meet all of the requirements for the GLSDV described in §§ 250.835(a), (b), and (d) and 250.836 on the gas-lift supply pipeline. Attach the GLSDV by flanged connection directly to the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser.	upstream (inboard) of the GLSDV.	flowline upstream (inboard) of the FSV.	downstream (out board) of the GLSDV.	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. (ii) Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (iii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iv) Suspend and seal the gas-lift flowline contained within the production riser in a flanged ANSI/API Spec. 6A component such as an ANSI/API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of ANSI/API Spec. 6A. (v) Ensure that all potential leak paths upstream or near the production riser BSDV on the platform provide the same level of safety and environmental protection as the production riser BSDV. (vi) Ensure that this complete assembly is fire-rated for 30 minutes.

* * * * *

Joseph R. Balash,

Assistant Secretary—Land and Minerals.

[FR Doc. 2019–11079 Filed 5–28–19; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 275

[Docket ID: DOD–2018–OS–0026]

RIN 0790–AK01

Right to Financial Privacy Act

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule describes the procedures the Department of Defense (DoD) will follow when seeking access to customer records maintained by financial institutions. These updates fulfill DoD's responsibilities under the Right to Financial Privacy Act.

DATES: This final rule is effective on June 28, 2019.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, (703) 571–0086.

SUPPLEMENTARY INFORMATION:

Background

DoD's current rule was last updated on May 4, 2006 (71 FR 26221). DoD's

revisions modified the regulatory text to only include content relating to those instances when the Department submits ''formal written requests'' to financial institutions for customer records, as described by 12 U.S.C. 3408. On October 29, 2018 the Department of Defense published the proposed rule in the **Federal Register** at (83 FR 54297–54300). Four commenters provided responses addressing issues within the scope of this rule. The comments are available through the eRulemaking docket, available online at *www.regulations.gov,* and then navigating to this rulemaking docket, DOD–2018–OS–0026.

Discussion of Comments

All four commenters expressed agreement with the rule. Commenters affirmed the need to protect financial privacy. Based on the comments, DoD is adopting the proposed changes in the final rule without revision. This rule will apply DoD-wide to provide consistent implementation across all components. Upon publication, one component-level rule at 32 CFR part 504 will be rescinded.

Expected Costs and Benefits

The primary benefit to a DoD-wide rule is consistent implementation across the DoD's responsibilities under the Act. The Act requires DoD to reimburse a financial institution for such costs as are reasonably necessary and which have been directly incurred based on the rates of reimbursement established by the Federal Reserve Board in 12 CFR 219.3. The average cost of reimbursement from DoD to financial institutions over the past five years is $4,328 per year and the Department does not anticipate an increase with the finalization of this rule. DoD has not paid any civil penalties associated with this rule as discussed in the Civil Liability section of the rule.

Regulatory Procedures

Executive Order 12866, ''*Regulatory Planning and Review*'' *and Executive Order 13563,* ''*Improving Regulation and Regulatory Review*''

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, distribute 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. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, ''*Reducing Regulation and Controlling Regulatory Costs*''

This final rule is not subject to the requirements of E.O. 13771 (82 CFR 9339, February 3, 2017) because this final rule is not significant under E.O. 12866.

Public Law 104–4, ''*Unfunded Mandates Reform Act*'' *(2 U.S.C. Ch. 25)*

This final rule is not subject to the Unfunded Mandates Reform Act because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100M or more in any one year.

Public Law 96–354, ''*Regulatory Flexibility Act*'' *(5 U.S.C. Ch. 6)*

It has been certified that 32 CFR part 275 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it does not have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''*Paperwork Reduction Act*'' *(44 U.S.C. Ch. 35)*

It has been certified that 32 CFR part 275 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''*Federalism*''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This final rule will not have a substantial effect on state and local governments, or otherwise have federalism implications.

List of Subjects in 32 CFR Part 275

Banks, Banking, Credit, Privacy.

■ Accordingly, 32 CFR part 275 is revised to read as follows:

PART 275—RIGHT TO FINANCIAL PRIVACY ACT

Sec.

275.1 Purpose.
275.2 Definitions.
275.3 Authorization.
275.4 Formal written request.
275.5 Certification.
275.6 Cost reimbursement.

Authority: 12 U.S.C. 3401, *et seq.*

§ 275.1 Purpose.

The purpose of this part is to authorize DoD Components to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act and to set forth the conditions under which such requests may be made.

§ 275.2 Definitions.

The terms used in this part have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978, Title XI of Public Law 95–630.

Act means the Right to Financial Privacy Act of 1978.

DoD Components means the law enforcement activities of the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the ''DoD Components'').

§ 275.3 Authorization.

The DoD Components are authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the DoD Component to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a grade designated by the head of the DoD Component. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 275.4; and

(e) The notice requirements required by section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, and described in paragraphs (e)(1) through (5) of this section are satisfied, except in situations (*e.g.,* section 1113(g)) where no notice is required.

(1) The notice requirements are satisfied when a copy of the request has

been served on the customer or mailed to the customer's last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry: ''Records or information concerning your transactions held by the financial institution named in the attached request are being sought by the Department of Defense [or the specific DoD Component] in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:''

(2)(i) Within ten days of service or within fourteen days of mailing of a subpoena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpoena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpoena shall be filed in the court that issued the subpoena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States District Court. Such motion or application shall contain an affidavit or sworn statement stating:

(A) That the applicant is a customer of the financial institution from which financial records pertaining to said customer have been sought; and

(B) The applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance within the provisions of the Act.

(ii) Service shall be made upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received a request.

(3) If a customer desires that such records or information not be made available, the customer must:

(i) Fill out the accompanying motion paper and sworn statement or write one of the customer's own, stating that he or she is the customer whose records are being requested by the Government and either giving the reasons the customer believes that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(ii) File the motion and statement by mailing or delivering them to the clerk at an appropriate United States District Court.

(iii) Serve the Government authority requesting the records by mailing or delivering a copy of the motion and statement to the Government authority.

(iv) Be prepared to go to court and present the customer's position in further detail.

(v) The customer does not need to have a lawyer, although he or she may wish to employ a lawyer to represent the customer and protect the customer's rights.

(4) If the customer does not follow the procedures in paragraphs (e)(2) and (3) of this section, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of the notice, the records or information requested therein may be made available. The records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event the customer will be notified after the transfer.

(5) Also, the records or information requested therein may be made available if ten days have expired from the date of service or fourteen days from the date of mailing of the notice and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions.

§ 275.4 Formal written request.

(a) The formal written request must be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by the issuing official, and shall set forth that official's name, title, business address, and business phone number. The request shall also contain the following:

(1) The identity of the customer or customers to whom the records pertain;

(2) A reasonable description of the records sought; and

(3) Such additional information which may be appropriate—*e.g.,* the date when the opportunity for the customer to challenge the formal written request expires, the date on which the DoD Component expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(b) In cases where customer notice is delayed by court order, a copy of the court order must be attached to the formal written request.

§ 275.5 Certification.

Before obtaining the requested records pursuant to a formal written request described in § 275.4, an official of a rank designated by the head of the requesting DoD Component shall certify in writing to the financial institution that the DoD Component has complied with the applicable provisions of the Act.

§ 275.6 Cost reimbursement.

Cost reimbursement to financial institutions for providing financial records will be made consistent with 12 CFR part 219, subpart A.

Dated: May 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–11013 Filed 5–28–19; 8:45 am]

BILLING CODE 5001–06–P

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: Temporary final rule.

SUMMARY: The Coast Guard is establishing 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 regulation prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Baltimore or a designated representative.

DATES: This rule is effective from 8:30 p.m. on July 3, 2019 through 10:30 p.m. on July 7, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0193 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 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 Information and Regulatory History

The Sherwood Forest Club, Inc., notified the Coast Guard that from 9:20 to 9:50 p.m. on July 3, 2019, it will be conducting a fireworks display launched from the end of the Sherwood Forest Club main pier, located adjacent to the Severn River, in Sherwood Forest, MD. In the event of inclement weather, the fireworks display will be scheduled for the same time on July 5, 2019.

The Marine Trades Association of Baltimore County, Inc. notified the Coast Guard that from 9:15 to 9:55 p.m. on July 6, 2019, it will be conducting a fireworks display 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 the same time on July 7, 2019.

The City of Havre de Grace 2019 Independence Day Commission notified the Coast Guard that from 9:15 to 9:45 p.m. on July 6, 2019, it will be conducting a fireworks display 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 the same time on July 7, 2019.

In response, on April 9, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones; July 4th Holiday Fireworks in the Coast Guard Captain of the Port Maryland-National Capital Region Zone'' (84 FR 14064). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these three fireworks displays. During the comment period that ended May 9, 2019, we received four comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in these three fireworks displays will be a safety concern for anyone within a 150-yard radius of the end of Sherwood Forest Club main pier along the Severn River, a 200-yard radius of the barge on the Middle River, and a 200-yard radius of the barge on the Susquehanna River. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received four comments on our NPRM published April 9, 2019. The comments were in support of the Coast Guard's rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM as a result of comments. However, there is a minor change to coordinates to one of the safety zones. The change is in paragraph (a)(2), to the location of ''Safety zone 2.'' The proposed rule stated the approximate position of the fireworks barge as latitude 39°18′24″ N, longitude 076°24′29″ W. The approximate position of the fireworks barge is actually latitude 39°18′25″ N, longitude 076°2″27″ W. The difference between the two locations is approximately 64 yards.

This rule establishes three safety zones for certain waters within the COTP Maryland-National Capital Region Zone, as described in 33 CFR 3.25–15, which will be enforced during the times described below for each zone.

The first safety zone will cover all navigable waters within 150 yards of the end of Sherwood Forest Club main pier located along the Severn River in Sherwood Forest, MD. A ''FIREWORKS—DANGER—STAY AWAY'' sign will 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. on July 3, 2019 fireworks display.

The second safety zone will cover all navigable waters within 200 yards of a barge in the Middle River located approximately 300 yards southeast of Wilson Point in Baltimore County, MD. ''FIREWORKS—DANGER—STAY AWAY'' signs will be posted on the port and starboard sides of the on-scene barge. 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 9:55 p.m. on July 6, 2019 fireworks display.

The third safety zone will cover all navigable waters within 200 yards of a barge in the Susquehanna River located approximately 300 yards southeast of Concord Point in Havre de Grace, MD. ''FIREWORKS—DANGER—STAY AWAY'' signs will be posted on the port and starboard sides of the on-scene barge. 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 to 9:45 p.m. on July 6, 2019 fireworks display.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 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 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have 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 three safety zones lasting seven hours that will prohibit entry within portions of the Severn River, Middle River, and Susquehanna River. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A 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, 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′25″ N, longitude 076°24′27″ 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 (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: May 23, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–11139 Filed 5–28–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0558; FRL–9993–79–Region 6]

Air Plan Approval and Promulgation of State Implementation Plan, Louisiana; Attainment Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revision that the State of Louisiana submitted to EPA on November 9, 2017 with supplements provided on February 8, 2018, August 24, 2018 and October 9, 2018. The purpose of this revision is to provide for attainment of the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the St. Bernard Parish, Louisiana Nonattainment Area. This plan (herein called a ''nonattainment plan'') includes Louisiana's attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the nonattainment plan addresses the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, implementation of reasonably available control measures and reasonably available control technology (RACM/RACT), base-year and projection-year emission inventories, enforceable emissions limitations and control measures, and contingency measures. EPA concludes that Louisiana has appropriately demonstrated that the nonattainment plan provisions provide for attainment of the 2010 1-hour primary SO_2 NAAQS in the St. Bernard Parish, Louisiana Nonattainment Area by the applicable attainment date and that the nonattainment plan meets the other applicable requirements under the CAA. This action is being taken in accordance with the CAA.

DATES: This rule is effective on June 28, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2017–0558. 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.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 6 Office, Air and Radiation Division, Regional Haze and SO_2 Section, 1445 Ross Avenue, Dallas, TX. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Robert Imhoff, EPA Region 6 Office, Regional Haze and SO_2 Section, 1445 Ross Avenue, (Mail code ARSI), Dallas, TX 75202–2750, (214) 665–7262, *Imhoff.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Summary of Major Issues Raised by Commenters and Our Responses
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I. Background and Purpose

On June 22, 2010, EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the St. Bernard Parish, Louisiana Nonattainment Area within the State of Louisiana. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These ''round one'' area designations were effective October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015 in this case. These SIPs are

required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018, in accordance with CAA sections 191–192.

Section 172(c) of the CAA lists the required components of a nonattainment plan submittal. The base year emissions inventory (section 172(c)(3)) is required to show a comprehensive, accurate, current inventory of all relevant pollutants in the nonattainment area. The nonattainment plan must identify and quantify any expected emissions from the construction of new sources to account for emissions in the area that might affect reasonable further progress (RFP) toward attainment, or that might interfere with attainment and maintenance of the NAAQS, and it must provide for a nonattainment new source review (NNSR) program (section 172(c)(5)). The attainment demonstration must include a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for RFP and expeditious attainment of the NAAQS (section 172(c)(2), (4), (6), and (7)). The nonattainment plan must include an analysis and provide for implementation of RACM, including RACT (section 172(c)(1)). Finally, the nonattainment plan must provide for contingency measures (section 172(c)(9)) to be implemented either in the case that RFP toward attainment is not made, or in the case that the area fails to attain the NAAQS by the attainment date.

On April 23, 2014, EPA issued a guidance document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (2014 guidance). This 2014 guidance provides recommendations for the development of SO_2 nonattainment SIPs to satisfy CAA requirements (*see, e.g.,* sections 172, 191, and 192). An attainment demonstration must also meet the requirements of 40 CFR part 51, subparts F and G, and 40 CFR part 51, appendix W (the *Guideline on Air Quality Models;* ''the *Guideline*''), and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment.

For a number of areas, including the St. Bernard Parish, Louisiana SO_2 Nonattainment Area, EPA published a document on March 18, 2016, that pertinent states had failed to submit the required SO_2 nonattainment plan by the submittal deadline. *See* 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions, and for EPA to promulgate a Federal implementation plan (FIP) under section 110(c) of the CAA. Louisiana submitted a nonattainment plan for the St. Bernard Parish, Louisiana Nonattainment Area on November 9, 2017 and supplemented it on February 8, 2018. On February 26, 2018, EPA determined that the State's SO_2 Nonattainment Area SIP revision for St. Bernard Parish was complete under 40 CFR part 51, app. V. As a result of EPA's February 26, 2018 completeness determination, and pursuant to the Clean Air Act 179(a), sanctions that would have applied, no longer apply upon such a determination of completeness. Furthermore, upon issuance of this final approval of Louisiana's SIP submittal, EPA's FIP obligation will cease to apply.

On April 19, 2018, we published a proposed rulemaking action to approve the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish, submitted by the State of Louisiana on November 9, 2017 and first supplemented on February 8, 2018. See 83 FR 17349. The April 19, 2018 action proposed approval of the following CAA SIP elements: The attainment demonstration for the SO_2 NAAQS and enforceable emissions limits, which included an Agreed Order on Consent (AOC) dated February 2, 2018 for the Rain CII Carbon, LLC. (Rain) facility; the reasonable further progress (RFP) plan; the reasonably available control measures (RACM) and reasonably available control technology (RACT) demonstration; the emission inventories; and the contingency measures. We also proposed to find that the State had demonstrated that its current Nonattainment New Source Review (NNSR) program covered the 2010 SO_2 NAAQS; therefore, no revision to the SIP was required for the NNSR element. Comments on the original proposal were required to be received by May 21, 2018. We received timely comments on the proposal.

After the close of the public comment period to the April 19, 2018 proposal, the Louisiana Department of Environmental Quality (LDEQ) submitted additional information to EPA on August 24, 2018. The additional information was submitted to us partly in response to a public comment received on the April 19, 2018 proposal from United States Senator from Louisiana, Bill Cassidy. Senator Cassidy's comment letter expressed concern that Rain would need to modify the February 2018 AOC entered between Rain and LDEQ as Rain did not believe that it could meet the limits set forth in the AOC without an additional extension to the compliance dates. In response to the comment, and to determine feasible emission limits for operations during transitions from exhaust flow through the hot stack to flow through the heat recovery boiler (referred to as the cold stack), LDEQ granted an extension of the deadline of the February 2018 AOC on April 27, 2018. LDEQ then issued a revised AOC on August 2, 2018. An air quality modeling analysis was submitted to EPA on August 24, 2018 to specifically demonstrate attainment of the NAAQS with the revised limits in the August 2018 AOC. EPA reviewed the new modeling analysis and found some errors and omissions. In response, LDEQ submitted an updated modeling analysis on October 9, 2018. The AOC (signed by LDEQ and Rain August 2, 2018 and submitted to EPA on August 24, 2018), and the October 9, 2018 modeling files (also submitted by LDEQ) serve as a supplement to the November 9, 2017 and February 8, 2018 SIP submittals and are intended to address the public comment by incorporating certain additional AOC revisions (dated August 2, 2018) and supporting modeling into the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish. All correspondence related to the supplemental August 24, 2018 and updated October 9, 2018 modeling analyses and the revised August 2, 2018 AOC are included in the public docket to this action.[1]

In a supplemental notice of proposed rulemaking on February 8, 2019 (84 FR 2801), EPA proposed to approve Louisiana's August 24, 2018 and October 9, 2018 updated modeling files as a supplement to the November 9, 2017 SIP and February 8, 2018 submittals. The State's submittal and attainment demonstration included all the specific attainment elements mentioned above, including new SO_2 emission limits and associated control technology efficiency requirements for the calcining plant, currently owned and operated by Rain CII Carbon. Rain's new SO_2 emission limits were developed in accordance with EPA's 2014 guidance as referenced above. Comments on EPA's supplemental proposed rulemaking were due on or before March 11, 2019. EPA received timely comments on the supplemental proposed approval for Louisiana's nonattainment area plan for the St. Bernard Parish, Louisiana Nonattainment Area. The comment

[1] For the related correspondence, please see the public docket at EPA–R06–OAR–2017–0558–0034.

letters received in response to the supplemental February 8, 2019 proposal and our earlier April 19, 2018 proposal are available in the docket for this final rulemaking action. EPA's summary of the more significant comments and EPA's responses are provided below. We respond to all comments received on both the original and supplemental proposals in a separate response to comment document available in the public docket for this action. For a comprehensive discussion of Louisiana's SIP submittal and EPA's analysis and rationale for approval of the State's submittal and attainment demonstration for this area, please refer to EPA's April 19, 2018 proposed approval and February 8, 2019 supplemental notice of proposed rulemaking.

II. Summary of Major Issues Raised by Commenters and Our Responses

We received five written comment letters in response to our original and supplemental proposals for approval of the SIP revisions for the St. Bernard Parish, Louisiana Nonattainment Area relevant to both actions.[2] We received comments from Sierra Club on both the April 19, 2018 proposal and the February 8, 2019 supplemental proposal; one comment letter from Congressman Cassidy on the April 19, 2018 proposal, and comment letters from the Louisiana Chemical Association (LCA) on both the April 19, 2018 proposal and the February 8, 2019 supplemental proposal. To review the complete set and text of the comments received, please refer to the publicly posted docket for this rulemaking as identified above. A document titled ''Response to Significant Comments on the Attainment Demonstration for the 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS) in St. Bernard Parish, Louisiana,'' also is included in the docket to this action and contains a complete list of comments and our detailed responses to all comments. Below, we provide a summary of some of the more significant comments received and a summary of EPA's responses.

Comments in Support

Comment: EPA received supportive comments from LCA on the April 19, 2018 initial proposed approval and on the February 8, 2019 supplemental proposal. The commenter expressed support for LDEQ's approach to the SIP and EPA's proposed approval.

EPA Response

EPA acknowledges the commenter's support.

Attainment Demonstration Comments

Comment: We received comments from Sierra Club stating that the 2016 monitored design value (DV) is just below the standard and that the attainment demonstration does not provide adequate assurance that air quality impacts will remain below the NAAQS.

EPA's Response

We disagree that the attainment demonstration does not provide adequate assurance that air quality impacts will remain below the NAAQS. The SO_2 demonstration SIP and the modeling, which is part of the SIP, indicate that the SO_2 health-based standard will be attained in and around St. Bernard Parish, thus protecting the health of the inhabitants.

The SO_2 emissions in St. Bernard Parish have continued to decline, the total emission rate with updated permits declining 21% from 2017 to 2018—from 9117 tpy to 7170 tpy. This decline in emissions along with the emission limits specified in the revised Rain AOC will maintain the reduced measured SO_2 concentrations at the monitors in St. Bernard Parish. Through the 4th quarter of 2018 (the most recent data available at this time), the SO_2 concentration data submitted to the AQS shows the 1st and 4th highest SO_2 2018 concentrations at the Vista monitor were 66.9 and 40.3 ppb respectively. The design value for 2018 certified by the State and subject to EPA review and concurrence is 59 ppb (154.6 $\mu g/m^3$), a significant decline from the 2016 design value of 73 ppb (191.2 $\mu g/m^3$).

Modeling Comments

Comment: One commenter (Sierra Club) asserted that in reviewing a state plan, EPA can approve, disapprove, partially approve, partially disapprove and issue its own plan. EPA may not fill the gaps in a facially deficient SIP without first concluding that the plan is deficient in some respect. Here, EPA has performed its own modeling as part of the proposed SIP approval, and in doing so, has blurred the lines between appropriate review and action on the State submittal, and its obligation to take Federal action in the absence of a complete and lawful SIP.

In addition, the commenter argues that neither the State's nor EPA's modeling provide adequate assurance that air quality impacts in St. Bernard Parish will remain below the NAAQS. EPA's modeling and the State's modeling appear to be fundamentally inconsistent as in Table 2 of the proposed rule the agency indicates that the maximum SO_2 impacts in St. Bernard Parish will be 190.8 µg/m3 while the State's own submittal concludes that the maximum impacts are 191.4 µg/m3.

EPA Response

Nothing in the Clean Air Act forecloses EPA from conducting an analysis to assist in its review and evaluation of the State's SIP submittal. EPA's modeling was an integral part of our review and evaluation of the State's SIP submittal to verify that the NAAQS was fully protected at all relevant locations when accounting for all measures in the SIP. In this case, EPA's modeling confirmed the State's analysis; our modeling was provided to show our process and to assess our reasons for approving the SIP submittal. We also consider the comment moot based on the State's August 24, 2018 and October 9, 2018 supplements to the SIP in which the State conducted its own additional modeling analysis to support the August 2, 2018 revised AOC.

EPA contacted LDEQ to confirm why the maximum SO_2 concentration in LDEQ Secretary Brown's letter[3] was slightly different (by 0.6 $\mu g/m^3$) from the value in the State's modeling files. LDEQ indicated that Secretary Brown's letter was based on preliminary modeling conducted in July 2018 to determine limits for the proposed AOC revision.[4] After that modeling was conducted, additional updates were made to emissions for other St. Bernard Parish sources to make sure that the modeling inventory was accurate, and LDEQ remodeled and provided the October 9, 2018 supplement. The modeled impacts are below the level of the 1-hour primary SO_2 NAAQS (196 $\mu g/m^3$) and demonstrate attainment of the 1-hour SO_2 primary NAAQS.[5]

Comment: One commenter (Sierra Club) took issue with the State's exclusion from modeling of several major SO_2 sources to the west because

[2] We also received five anonymous public comments on the April 19, 2018 proposed rulemaking action that were not relevant to the proposal. Please see the separate Responses to Significant Comments document for more detailed information.

[3] See August 24, 2018 Letter from Chuck Carr Brown, Louisiana Department of Environmental Quality to Anne Idsal, (former) Regional Administrator submitting Supplemental Information and the August 2, 2018 Executed Administrative Order on Consent available in the docket for this action. See docket ID No. EPA–R06–OAR–2017–0558–0032.

[4] See Email from Vennetta Hayes to Robert Imhoff on March 18, 2019 included in docket to this action email_*Hayes_to_Imhoff_03182019.pdf.*

[5] For all related correspondence, please see the public docket at EPA–R06–OAR–2017–0558–0034.

they did not cause modeled gradients >3.5 μg/m³ at any receptors in St. Bernard Parish and to characterize their contribution through the background concentrations. The commenter states that the use of 3.5 μg/m³ as a threshold is arbitrary to define significant contribution to the nonattainment area.

EPA Response

EPA used several factors in evaluating and concurring with the State's decision to exclude the sources to the west from the modeling. In the State's judgment, the distance to these western sources (>25km to the Parish boundary), and the low maximum concentrations and the small impact gradients modeled for these sources in the western edge of St. Bernard Parish support the determination that their impacts not be included in the modeling or characterized in the modeling through the use of the background monitor value added to the modeling concentration.

EPA's guidance [6] is that distant sources (beyond a 10–20 km range from St. Bernard) need not be included in the modeling unless they are very large (on the order of 5,000 to 10,000 tpy or more for ranges beyond 20 km). In our 1-hour NO_2 and SO_2 modeling guidance, we specifically indicate that in many situations sources beyond 10 km would not need to be included.

For St. Bernard there were limited options for the background monitor data because the existing monitors are directly impacted by nearby sources under certain wind directions. The option chosen was to use a monitor, Meraux, located in St. Bernard Parish, to best characterize background concentrations because of its proximity. Since the Meraux monitor was impacted by Valero refinery emissions which were directly included in the model, LDEQ excluded the data when winds were from directions that could transport Valero's emissions to this monitor. Valero is located to the west of the Meraux monitor. EPA acknowledges that the exclusion of wind directions from the Valero refinery to the Meraux background monitor also means that the background does not include all potential contributions from the remote (≤20km) sources to the west. As discussed above, none of these sources would normally be included in the modeling directly due to their size and distance. However, because of the exclusion of certain wind directions coupled with relatively few point sources in the included wind directions that made up the Meraux monitor's background data, out of an abundance of caution, EPA requested that the State model the remote western sources to ensure that their exclusion was reasonable and would not impact the attainment demonstration if they were included.

EPA's concern was whether the attainment demonstration modeling would show a projected value to the east of Rain very near the standard during Rain's normal operations. In that case, if the excluded sources to the west had the potential for an appreciable impact there would be a concern that the modeled DV could exceed the standard if the impact from those sources were included. In order to make sure that there was no appreciable potential impact from these sources to the west, LDEQ agreed to look at sources individually and also ensure that they were not omitting a cluster of sources that could have potential impacts much higher than 3.5 μg/m³. LDEQ chose the value of 3.5 μg/m³, which is less than 50% of the 3 ppb (7.86 μg/m³) Significant Impact Level that LDEQ has used in their permitting program for the 1-Hour SO_2 NAAQS. LDEQ's analysis was conservative as it assessed the potential of the sources to add 3.5 μg/m3 to a receptor anywhere in St. Bernard Parish. For these sources to the west to play a role in the attainment demonstration, their impact would have to occur at a time and at a receptor that was very near the standard in St. Bernard Parish. The use of the <3.5 μg/m³ was not as a significance threshold but as a conservative factor assessing the potential impacts anywhere in St. Bernard Parish from these sources. As long as the modeled maximum design value to the east of Rain in the absence of these sources to the west was more than 3.5 μg/m3 below the NAAQS, then even if all the western sources were included in the modeling they could not have caused a violation of the NAAQS.

The result of the modeling for the attainment demonstration was that the highest design values were projected to the west of Rain during periods with winds out of the east. The excluded western sources cannot add to this design value as they are downwind of the area of highest modeled concentration during this period. The highest values to the east of Rain under any scenario were projected to be more than 10 μg/m³ below the standard. Given that there were only two potential remote sources that were over 1,000 tpy to the west and they both had modeled impacts below 3.5 μg/m³ and were not above the clustering threshold, we know that the sources could not endanger the attainment demonstration if they were included in the modeling. EPA noted that the low concentrations modeled for these sources comports with the guidance from appendix W 8.3.3 (b) i–iii. Further, these maximum modeled impacts occurred at the extreme western boundary of St. Bernard Parish and declined to the east where the maximum design value was located.

The table below gives the distance from the excluded sources from the west to the modeled maximum design value to the east of Rain that occurs during one stage of Rain's operation and their 2014 NEI emissions. Based on the 2014 NEI emissions and distance to the maximum modeled design value east of Rain it was appropriate to not include these sources to the west in the model. LDEQ's analysis to consider these sources to the west for inclusion in the modeling was conservative and provided additional support to the conclusion that inclusion of these sources would not impact the attainment demonstration.

Excluded source	Distance to modeled max east of rain (km)	2014 Emissions (tpy)
Cornerstone Chemical—Fortier	29	1154
Valero Refining—St. Charles	41	212
Rain CII Carbon—Norco	42	2710
Motiva Refinery—Norco	42.5	226
Shell Chemical—Norco	42.8	177
Union Carbide—St Charles	46.5	413

[6] June 29, 2010 memo from Steve Page, Guidance Concerning the Implementation of the 1-hour NO_2 NAAQS for the Prevention of Significant Deterioration Program.

Comment: One commenter (Sierra Club) noted that as part of its attainment demonstration, the State modeled a transition from hot to cold stack operations from January 8 through January 9, 2017. The analysis found the highest modeled design value was for the cold stack alone with an emission rate of 510 lb/hr. The modeled DV of 192.4 µ/m3 is within 2% of the standard. Yet the actual emissions for the cold stack shown in Figure 1 indicate that there are several hours with emissions above this limit of 510 lb/hr. The commenter states that neither LDEQ nor EPA explain how the 510 lb/hr limit will be enforced, which further gives rise to the representativeness of such a small sample size that was chosen to exemplify the transition. There is no comparison to other transition periods and no justification of why the single 33-hour period modeled from January 2017 is representative of a worst case and an assurance that 510 lb/hr is not exceeded more frequently. The fact that even this one period chosen for the analysis has hourly emissions exceeding the limit suggests that a historical examination of all transition periods and their associated hot and cold stack emissions is warranted.

EPA Response

The purpose of the use of the transition was to use the stack parameters (*e.g.* stack temperature and flow velocity) for an actual transition to give realistic parameters (that is those that the plant can reliably maintain) to model the allowable emission rates throughout the transition period. As stated in the TSD, reduced SO_2 emission rates were derived from modeling and Rain must achieve them to attain the standard. The few hours with rates above the new emission rate limit are not pertinent to compliance since the 510 lb/hr limit was not in place at the time in January 2017. The August 2, 2018 AOC specifies both the stack parameters and the emission rate to be maintained during normal operation through the cold stack and at the different stages of transition and the model indicates that the standard will be met under all these conditions. While the use of data from an actual transition gives confidence that the plant can successfully meet the conditions of the AOC, examination of past additional transitions would not add value.

Compliance with the 510 lb/hr limit on the cold stack is achieved through the automated control and monitored by the installed CEM system which measures both concentration and mass flow rate. The emission rate required is programmed into the system and it governs the operational parameters of the scrubber to achieve the desired rate. The emission rate attained is recorded directly and reported for compliance.

Comment: One commenter (Sierra Club) questioned the choice to use rural dispersion coefficients in an area they believe to be urban. The commenter asserts that modeling should have been run with both rural and urban coefficients.

EPA Response

LDEQ stated that rural coefficients were appropriate since the surrounding rivers, lakes, and wetlands would tend to minimize the urban heat island effect. In particular, the wind direction for the highest design values is from the east which contains an extensive wetland. See our full Response to Significant Comments document for a detailed analysis of the land use around the facility and in the region. EPA agrees with LDEQ that this choice was appropriate for this analysis and running the model with urban coefficients was not appropriate or necessary.

Comment: One commenter (Sierra Club), argues that Louisiana's SIP revision, the AOC, or EPA's approval does not provide understandable conditions and emission limits for the Rain CII Carbon, LLC facility. The commenter argues that the AOC contains numerous overlapping, and in some cases, inconsistent standards that govern the same pollutant. Moreover, the AOC includes many alternatives for compliance, none of which involve actually measuring or monitoring the pollution emitted by the facility. Because the SIP fails to include any meaningful way for LDEQ or EPA to monitor compliance, the emission limits and compliance obligations must be revised so that the conditions are clear, specific, and unambiguous.

EPA Response

We disagree with the comment. As to the first part of the comment over inconsistent standards for the same pollutant, the AOC provides clear requirements at all stages of operation of the plant to ensure attainment of the NAAQS. At every operational stage, the operational conditions (temperature, flow and emission rate) needed are unequivocal and distinct. As illustrated in Figure 5 from the supplemental TSD and repeated in the detailed Response to Comment document included in the docket to this action, the requirements do not overlap as stated by the commenter—each block is distinct (they do not overlap) and the required conditions are specific.

As to the comment regarding alternatives for compliance, as stated above and illustrated in Figure 5 from the supplemental TSD, the requirements for compliance are specific and distinct for each operational phase. The cold stack requirements are directly measured and reported. Compliance with the hot stack requirements is monitored by measurements of temperature and flow rates and a verified emission rate equation. The equation is based on a mass balance of the sulfur contained in the input green coke and output calcined coke determined through composite samples taken throughout the operational day. It should be noted that the hours of operation of the hot stack either by stand-alone operation or during transitions are limited. The stand-alone hours of operation are limited by the permit to less than 500 hours per year. According to Rain's 2017 Title V Specific Requirements Report [7] the plant operated the hot stack-alone 435 hours (5% of the time) and transition operations 394 hours (4.5% of the time).

Procedural and Other Comments

Comment: One commenter (Sierra Club) stated that EPA's original proposal and supplemental notice of proposed rulemaking fail to meet the Clean Air Act's statutory deadline for issuing a FIP, and the agency must impose sanctions for failing to submit a lawful SIP. Under Section 192, these SIPs are required to demonstrate that their respective areas will attain the NAAQS no later than 5 years from the date of the nonattainment designation—here, no later than August 5, 2018. However, Louisiana failed to timely submit a nonattainment SIP for St. Bernard Parish; on March 18, 2016, EPA published a final rule for failure to submit a nonattainment SIP. This started an 18-month sanction clock ending on September 18, 2017. EPA's February 26, 2018 determination of completeness letter to LDEQ is not a substitute for a finding of the Administrator that the State has come into compliance, and therefore the agency must impose sanctions. Lastly, the State's supplemental modeling was not submitted until October 9, 2018—two months after the deadline.

EPA Response

We disagree with the Commenter. With regard to the Commenter's statements on sanctions, we find the comments are outside the scope of the proposal and supplemental proposal

[7] Title_V_Specific_Requirements_Report_2017.pdf included in the docket for this action.

actions and not germane to our original or supplemental proposed action to approve the SIP, since the determination of completeness and correction of deficiency that stopped the above-referenced sanctions clock occurred before we proposed this SIP approval, and therefore we are not required to respond to the comment. Further, under EPA's rules implementing mandatory sanctions, it is clear that sanctions clocks started by a finding of failure to submit per 40 CFR 52.31(c)(1) are terminated by the finding that the state has corrected the deficiency via a letter from the Administrator to the Governor, under 40 CFR 52.31(d)(5). Moreover, under Delegation 7–67, the authority to make this finding is delegated to Regional Administrators, who may re-delegate this authority to Division Directors.[8] In this case, the completeness finding under 40 CFR part 51, app. V, was made by the delegated Division Director and communicated to the State by a letter signed by EPA on February 26, 2018.[9] Under the CAA, once such finding is made and a SIP submittal is deemed complete, the imposition of New Source Review and highway funding sanctions ceases to apply. With regard to the October modeling files, as stated previously, these served as an update to the November 9, 2017 and February 8, 2018 SIP submittals and were intended to address a specific public comment by incorporating certain additional AOC revisions (dated August 2, 2018) and supporting modeling into the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish. Specifically, the October modeling files were submitted by LDEQ to correct some errors and omissions in the August 24, 2018 modeling. The October 2018 modeling analysis, including the revised August 2, 2018 AOC emission limits for the Rain facility (emission limits effective August 2, 2018), resulted in concentrations below the level of the 1-hour primary SO_2 NAAQS and demonstrate attainment of the 1-hour SO_2 primary NAAQS before the attainment deadline of October 4, 2018.

We note that the commenter is incorrect with regards to the attainment date. As detailed in the background section above, the ''round one'' area designations were effective October 4, 2013. SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018. With regard to a FIP obligation mentioned by the commenter, as we noted above, any duties EPA has to promulgate a FIP are outside the scope of this SIP approval action, and therefore we are not required to respond to the comment, however, such alleged duties will terminate upon issuance of this final rulemaking approval action, thus EPA's FIP obligation will cease to apply.

Comment: One commenter stated that EPA's finding of failure to submit triggered a requirement that the EPA promulgate a FIP within two years of the finding—*i.e.,* by and March 18, 2018—unless, by that time (a) the state has made the necessary complete submittal and (b) EPA has approved the submittal as meeting applicable requirements. Since Louisiana missed the deadline for a complete submittal EPA must impose a nonattainment FIP for St. Bernard Parish.

EPA Response

With regard to the Commenter's statements on the FIP, we find that any duties EPA has to promulgate a FIP are outside the scope of this SIP approval action, and therefore we are not required to respond to the comment. However, we note that in any case such alleged duties will terminate upon EPA's final approval of the SIP.

III. Final Action

EPA has determined that Louisiana's SO_2 nonattainment plan meets the applicable requirements of sections 110, 172, 191, and 192 of the CAA. EPA is approving Louisiana's November 9, 2017 SIP submission, as supplemented by the State on February 8, 2018, August 24, 2018 and October 9, 2018, for attaining the 2010 primary 1-hour SO_2 NAAQS for the St. Bernard Parish, Louisiana Nonattainment Area and for meeting other nonattainment area planning requirements. This SO_2 nonattainment plan includes Louisiana's attainment demonstration for the SO_2 nonattainment area. The nonattainment area plan also addresses requirements for RFP, RACT/RACM, enforceable emission limits and control measures, base-year and projection-year emission inventories, and contingency measures. Louisiana has also demonstrated it met the requirements regarding NNSR for SO_2 and this NNSR program already is part of the SIP.

EPA is approving into the Louisiana SIP the provisions of Rain Carbon CII's Administrative Order, issued August 2, 2018, that constitute the SO_2 operating and emission limits and their associated monitoring, testing, recordkeeping, and reporting requirements. EPA is approving these provisions as a source-specific SIP revision.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of revisions to the Louisiana source-specific requirements as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact the person listed 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 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.[10]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

[8] See docket for a copy of the 7–67 Delegation.

[9] See docket for a copy of this letter.

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

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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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).

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 21, 2019.

David Gray,

Acting Regional Administrator, Region 6.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 T—Louisiana

■ 2. Section 52.970 is amended by:

■ a. In the table in paragraph (d), adding an entry for ''Rain CII Carbon in St. Bernard Parish'' at the end of the table; and

■ b. In the second table in paragraph (e) titled ''EPA Approved Louisiana NonRegulatory Provisions and Quasi-Regulatory Measures'', adding the entry ''St. Bernard Parish, Louisiana Nonattainment Area Plan for the 2010 Primary 1-Hour Sulfur Dioxide NAAQS'' at the end of the table.

The additions read as follows:

§ 52.970 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED LOUISIANA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order number	State approval/ effective date	EPA approval date	Comments
* *	*	*	* *	*
Rain CII Carbon in St. Bernard Parish.	In the Matter of Rain CII Carbon LLC, St. Bernard Parish.	8/2/2018	5/29/2019 [Insert **Federal Register** citation].	Amended Administrative order on Consent dated 8/2/18. Pyroscrubber (EQT 004) and Waste Heat Boiler/Baghouse (EQT 0003).

(e) * * *

EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanation
* *	*	*	* *	*
St. Bernard Parish, Louisiana Nonattainment Area Plan for the 2010 Primary 1-Hour Sulfur Dioxide NAAQS.	St. Bernard Parish, Louisiana SO_2 Nonattainment Area.	11/9/2017, 2/8/2018, 8/24/2018, 10/9/2018	5/29/2019 [Insert **Federal Register** citation].	Revised AOC dated 8/2/2018 submitted 8/24/2018. Revised modeling submitted 10/9/2018.

[FR Doc. 2019–10918 Filed 5–28–19; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0829; FRL–9993–84–Region 1]

Air Plan Approval; Massachusetts; Nonattainment New Source Review Program Revisions; Infrastructure Provisions for National Ambient Air Quality Standards; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. On February 9, 2018, the Massachusetts Department of Environmental Protection (MassDEP) submitted revisions to the EPA satisfying the MassDEP's earlier commitment to adopt and submit provisions that meet certain requirements of the Nonattainment New Source Review (NNSR) air permit program regulations. The EPA is also approving the Commonwealth's NNSR certification, which was included in the February 9, 2018, SIP revision, as sufficient for the purposes of satisfying the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, this action converts the EPA's December 21, 2016, conditional approval for certain infrastructure provisions relating to Massachusetts's NNSR air permit program to full approval. This action is being taken under the Clean Air Act.

DATES: This rule is effective on June 28, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0829. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, Air Permits, Toxics, and Indoor Programs Branch, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail Code 05–2), Boston, MA 02109—3912, tel. (617) 918–1624, email *wortman.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose

On February 14, 2019, the EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts. *See* 84 FR 4021. The NPRM proposed approval of several revisions to the Commonwealth's NNSR permit program to address the relevant issues identified in the EPA's December 21, 2016 conditional approval of the Commonwealth's infrastructure SIP for the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide NAAQS. As a result of the proposed approval of the NNSR permitting revisions, the EPA also proposed to convert the December 21, 2016 conditional approval to a full approval for Clean Air Act (CAA) section 110(a)(2)(D)(i)(II). In addition, the NPRM proposed to approve the Commonwealth's NNSR certification as sufficient for addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The formal SIP revision was submitted by Massachusetts on February 9, 2018.

A. NNSR SIP Revisions and the EPA's December 21, 2016 Conditional Approval

On December 21, 2016, the EPA published a final conditional approval for Massachusetts's June 6, 2014 infrastructure SIP submittal for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 NO_2, and 2010 sulfur dioxide (SO_2) NAAQS. *See* 81 FR 93627. This rulemaking identified that a provision under section 110(a)(2)(D)(i)(II) of the CAA was not included in the Commonwealth's June 6, 2014 SIP submittal. Among other things, section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The EPA sometimes refers to this requirement under subsection 110(a)(2)(D)(i)(II) as ''prong 3.'' To address the conditional approval for prong 3, on February 9, 2018, the MassDEP submitted regulatory provisions for approval into the Commonwealth's SIP. As explained in the NPRM, the revisions addressed the NNSR requirements that would make the Commonwealth's NNSR program applicable to sources regardless of the attainment status of the area where the source is located. These revisions were necessary because Massachusetts is located in the Ozone Transport Region (OTR).[1]

B. NNSR Certification for 2008 Ozone NAAQS

Dukes County in Massachusetts was designated nonattainment for the 2008 8-hour ozone NAAQS on July 20, 2012 using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, Dukes County was classified as a marginal nonattainment area. On March 6, 2015, the EPA issued a final rule entitled, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), which established the requirements that state, tribal, and local air quality management agencies must meet in developing implementation plans for areas where ozone concentrations exceed the 2008 8-hour ozone

[1] CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards. Thus, NNSR permitting requirements apply statewide, even if the state is designated attainment for the ozone NAAQS.

NAAQS.[2] *See* 80 FR 12264. Areas that were designated as marginal nonattainment areas for the 2008 8-hour ozone NAAQS were required to attain no later than July 20, 2015, based on 2012–2014 monitoring data. *See* 40 CFR 51.1103. The Dukes County nonattainment area attained the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final determination of attainment for the 2008 8-hour ozone standard for the Dukes County nonattainment area. *See* 81 FR 26697 (May 4, 2016).

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Massachusetts was required to develop a SIP revision addressing certain CAA requirements for the Dukes County nonattainment area, and submit to the EPA an NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015).[3] [4] Because Massachusetts already has a NNSR program that applies statewide, Massachusetts can certify the adequacy of its existing NNSR program with respect to the 2008 ozone NAAQS for the Dukes County nonattainment area.[5] *See* 40 CFR 51.1114.

On February 3, 2017, the EPA found that 15 states (including the Commonwealth of Massachusetts) and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the ozone transport region.[6] *See* 82 FR 9158. MassDEP submitted its February 9, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit.

Other specific requirements of the Commonwealth's NNSR SIP revisions and NNSR certification, and the rationale for EPA's proposed action, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

The EPA's review of MassDEP's February 9, 2018 SIP submittal indicates that the submittal satisfies the requirements of the CAA and is appropriate for inclusion into the SIP. The EPA therefore is approving the SIP revisions submitted by MassDEP. Also, as a result of our approval of the NNSR permitting revisions in this action, the EPA is converting the December 21, 2016 conditional approval to a full approval for prong 3 of CAA section 110(a)(2)(D)(i)(II). Other aspects of EPA's December 21, 2016 conditional approval will be addressed in other actions.

The EPA is also approving MassDEP's February 9, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The EPA has concluded that MassDEP's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit relating to submission of a NNSR certification.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Massachusetts's 310 CMR 7.00: Appendix A as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 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 State implementation plan, have been incorporated by 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.[7]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action 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

[2] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[3] Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub-element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification. This type of infrastructure SIP submission may, *e.g.,* take the form of a letter to the EPA from the Governor or her/his designee containing a ''certification'' (or declaration) that the already-approved SIP contains or references provisions that satisfy all or some of the requirements of section 110(a)(2), as applicable, for purposes of implementing the new or revised NAAQS.

[4] Massachusetts's obligation to submit the NNSR Certification SIP was not affected by the D.C. Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist.* v. *EPA.*

[5] Massachusetts's February 9, 2018 certification of adequacy that the SIP meets the NNSR requirements for the 2008 ozone NAAQS relies on the inclusion of the SIP revisions approved in this action.

[6] States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. *See* 40 CFR 51.1114. Massachusetts's SIP revision certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the Commonwealth exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. *See* 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

[7] 62 FR 27968 (May 22, 1997).

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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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).

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: May 19, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 W—Massachusetts

§ 52.1119 [Amended]

■ 2. Section 52.1119 is amended by removing and reserving paragraph (a)(4).

■ 3. Section 52.1120 is amended:

■ a. In the table in paragraph (c), by revising the entry for ''310 CMR 7.00, Appendix A''; and

■ b. In the table in paragraph (e), by adding entries for ''Infrastructure SIP for the 1997 Ozone NAAQS'', ''Infrastructure SIP for the 2008 Lead NAAQS'', ''Infrastructure SIP for the 2008 Ozone NAAQS'', ''Infrastructure SIP for the 2010 NO_2 NAAQS'', and ''Infrastructure SIP for the 2010 SO_2 NAAQS'' at the end of the table.

The revision and additions read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

EPA Approved Massachusetts Regulations

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	*	*	*	*
310 CMR 7.00, Appendix A.	Emission Offsets and Non-attainment Review.	October 22, 1999	May 29, 2019 [Insert **Federal Register** citation].	Approves revisions for consistency with underlying federal regulations that make the Commonwealth's SIP-approved NNSR program applicable to certain sources of NO_X and VOC statewide.
*	*	*	*	*

[1] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * * (e) * * *

MASSACHUSETTS NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Infrastructure SIP for 1997 Ozone NAAQS.	Statewide	February 9, 2018 ..	May 29, 2019 [Insert **Federal Register** citation].	Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved.
Infrastructure SIP for 2008 Lead NAAQS.	Statewide	February 9, 2018 ..	May 29, 2019 [Insert **Federal Register** citation].	Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved.
Infrastructure SIP for 2008 Ozone NAAQS.	Statewide	February 9, 2018 ..	May 29, 2019 [Insert **Federal Register** citation].	Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved.
Infrastructure SIP for 2010 NO_2 NAAQS.	Statewide	February 9, 2018 ..	May 29, 2019 [Insert **Federal Register** citation].	Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved.
Infrastructure SIP for 2010 SO_2 NAAQS.	Statewide	February 9, 2018 ..	May 29, 2019 [Insert **Federal Register** citation].	Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved.

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019–10875 Filed 5–28–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0275; FRL–9993–48]

Clofentezine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clofentezine in or on guava. The Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 29, 2019. Objections and requests for hearings must be received on or before July 29, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0275, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0275 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 29, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0275, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8660) by The Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.446 be amended by establishing tolerances for residues of the insecticide clofentezine, 3,6-bis(2-chlorphenyl)-1,2,4,5-tetrazine, in or on guava at 1 part per million (ppm). That document referenced a summary of the petition prepared by Makhteshim Agan of North America (ADAMA), the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing a tolerance level for residues in or on guava at 3 ppm rather than 1 ppm as requested. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clofentezine including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clofentezine follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The primary target organ is the liver with secondary effects on the thyroid. There is no concern for increased quantitative or qualitative susceptibility of the young following *in utero* (rats and rabbits) and pre-and post-natal exposure (rats) to clofentezine. Clofentezine has been classified as a possible human carcinogen based on male rat thyroid follicular cell adenoma and/or carcinoma combined tumor rates. The Q_1* value for clofentezine using the ¾ interspecies scaling factor is 3.76×10^{-2} $(mg/kg/day)^{-1}$. Clofentezine is not considered a mutagen.

Further detail on the toxicological profile for clofentezine is discussed in Unit II.A. of the final rule published in the **Federal Register** of June 14, 2016 (81 FR 38605) (FRL–9942–23).

Specific information on the studies received and the nature of the adverse effects caused by clofentezine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Clofentezine. Human-Health Risk Assessment to Support a Section 3 New Use on Guava'' at page 14 in docket ID number EPA–HQ–OPP–2018–0275.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://*

www.epa.gov/pesticide-science-and-assessing-pesticide-risks.

A summary of the toxicological endpoints for clofentezine used for human risk assessment is discussed in Unit II.B of the final rule published in the **Federal Register** of June 14, 2016 (81 FR 38606) (FRL–9942–23).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clofentezine, EPA considered exposure under the petitioned-for tolerances as well as all existing clofentezine tolerances in 40 CFR 180.446. EPA assessed dietary exposures from clofentezine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for clofentezine; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used anticipated residues (average residues from available field trial data) for all registered and proposed commodities as well as empirical and updated 2018 default processing factors. Where data were available, the Agency used percent crop treated estimates; otherwise, EPA assumed 100 percent crop treated.

iii. *Cancer.* Based on the data cited in Unit III.A., EPA has concluded that clofentezine should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. Cancer risk was quantified using the same estimates as discussed in Unit III.C.1.ii., *Chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the average PCT for existing uses as follows: Almonds: 5%; apples: 2.5%; apricots: 2.5%; cherries: 5%; grapes: 1%; nectarines: 5%; peaches: 5%; pears: 5%; and walnuts: 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which clofentezine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for clofentezine in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clofentezine. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM–GW) models, the estimated drinking water concentrations (EDWCs) of clofentezine acute exposures are estimated to be 7.59 parts per billion (ppb) for surface water and less than 0.05 ppb for ground water. For chronic exposures for non-cancer assessments, the EDWCs are estimated to be 0.062 ppb for surface water and less than 0.05 ppb for ground water. For chronic exposures for cancer assessments, the EDWC is estimated to be 0.025 ppb for surface.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 0.062 ppb was used to assess the contribution to drinking water. For cancer dietary risk assessment, the water concentration value of 0.025 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Clofentezine is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found clofentezine to share a common mechanism of toxicity with any other substances, and clofentezine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that clofentezine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no concern for increased quantitative or qualitative susceptibility of the young following *in utero* (rats and rabbits) and pre-and post-natal exposure (rats) to clofentezine.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clofentezine is complete.

ii. There is no indication that clofentezine is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that clofentezine results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to clofentezine in drinking water. These assessments will not underestimate the exposure and risks posed by clofentezine.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, clofentezine is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clofentezine from food and water will utilize less than 1% of the cPAD for the general U.S. population and all population subgroups. There are no residential uses for clofentezine.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, clofentezine is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for clofentezine.

4. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that by applying the Q_1* of 3.76×10^{-2} $(mg/kg/day)^{-1}$ to the exposure value results in a cancer risk estimate of 3.9×10^{-7} for adults. EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or 1×10^{-6}) or less to be negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to clofentezine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC)) is available to enforce the tolerance expression. The limit of quantitation (LOQ) and limit of detection (LOD) were determined to be 0.01 ppm and 0.003 ppm, respectively.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint

United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for clofentezine on guava.

C. Response to Comments

One comment was received on the Notice of Filing expressing concern about pollution in cities due to human waste. The comment did not raise any issue related to the Agency's safety determination for clofentezine tolerances. The receipt of this comment is acknowledged; however, this comment is not relevant to this action.

D. Revisions to Petitioned-For Tolerances

The Agency is establishing a tolerance for residues of clofentezine in or on guava at 3 ppm, rather than 1 ppm as requested. The storage stability data indicated a low average concurrent recovery of residues in guava. To account for the low storage stability recoveries, the Agency applied a factor of 3X to the average field trial values, resulting in a calculation of higher residues on guava and a need for a higher tolerance level.

V. Conclusion

Therefore, a tolerance is established for residues of clofentezine, 3,6-bis(2-chlorphenyl)-1,2,4,5-tetrazine, in or on guava at 3 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is this action considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 21, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.446, add alphabetically the entry ''Guava'' to the table in paragraph (a)(1) to read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Guava	3
* * * * *	

* * * * *

[FR Doc. 2019–11094 Filed 5–28–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2019–0003; Internal Agency Docket No. FEMA–8581]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Akron, Village of, Erie County	361553	May 2, 1975, Emerg; November 19, 1980, Reg; June 7, 2019, Susp.	June 7, 2019	June 7, 2019.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Alden, Town of, Erie County	360225	December 26, 1973, Emerg; June 1, 1981, Reg; June 7, 2019, Susp.	.....do *	Do.
Alden, Village of, Erie County	360224	August 28, 1974, Emerg; January 6, 1984, Reg; June 7, 2019, Susp.	.....do	Do.
Amherst, Town of, Erie County	360226	August 9, 1974, Emerg; December 18, 1984, Reg; June 7, 2019, Susp.	.....do	Do.
Angola, Village of, Erie County	360982	April 14, 1975, Emerg; May 18, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Blasdell, Village of, Erie County	361489	December 16, 1975, Emerg; June 25, 1976, Reg; June 7, 2019, Susp.	.....do	Do.
Brant, Town of, Erie County	360229	August 4, 1975, Emerg; January 6, 1984, Reg; June 7, 2019, Susp.	.....do	Do.
Buffalo, City of, Erie County	360230	January 16, 1974, Emerg; November 18, 1981, Reg; June 7, 2019, Susp.	.....do	Do.
Cheektowaga, Town of, Erie County	360231	February 4, 1972, Emerg; July 5, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Clarence, Town of, Erie County	360232	April 4, 1975, Emerg; April 1, 1982, Reg; June 7, 2019, Susp.	.....do	Do.
Colden, Town of, Erie County	360233	May 27, 1975, Emerg; July 2, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Collins, Town of, Erie County	360234	May 26, 1972, Emerg; May 16, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Concord, Town of, Erie County	360235	July 1, 1975, Emerg; February 27, 1984, Reg; June 7, 2019, Susp.	.....do	Do.
Depew, Village of, Erie County	360236	December 24, 1974, Emerg; August 3, 1981, Reg; June 7, 2019, Susp.	.....do	Do.
East Aurora, Village of, Erie County	365335	December 23, 1971, Emerg; July 20, 1973, Reg; June 7, 2019, Susp.	.....do	Do.
Elma, Town of, Erie County	360239	February 4, 1972, Emerg; June 1, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Evans, Town of, Erie County	360240	April 21, 1972, Emerg; September 30, 1977, Reg; June 7, 2019, Susp.	June 7, 2019	June 7, 2019.
Gowanda, Village of, Cattaraugus and Erie Counties.	360075	June 23, 1972, Emerg; June 1, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Grand Island, Town of, Erie County	360242	September 6, 1974, Emerg; January 16, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Hamburg, Town of, Erie County	360244	May 23, 1974, Emerg; November 19, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Hamburg, Village of, Erie County	360243	February 17, 1977, Emerg; January 20, 1982, Reg; June 7, 2019, Susp.	.....do	Do.
Holland, Town of, Erie County	360245	July 23, 1975, Emerg; May 1, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Lancaster, Town of, Erie County	360249	May 16, 1974, Emerg; December 1, 1981, Reg; June 7, 2019, Susp.	.....do	Do.
Lancaster, Village of, Erie County	360248	May 19, 1975, Emerg; July 2, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Marilla, Town of, Erie County	360250	July 18, 1975, Emerg; September 29, 1978, Reg; June 7, 2019, Susp.	.....do	Do.
Newstead, Town of, Erie County	360251	July 18, 1975, Emerg; November 19, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Orchard Park, Town of, Erie County	360255	August 1, 1975, Emerg; March 16, 1983, Reg; June 7, 2019, Susp.	.....do	Do.
Orchard Park, Village of, Erie County	360254	July 3, 1975, Emerg; September 2, 1981, Reg; June 7, 2019, Susp.	.....do	Do.
Tonawanda, City of, Erie County	360259	August 21, 1974, Emerg; August 1, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Tonawanda, Town of, Erie County	360260	July 28, 1975, Emerg; August 17, 1981, Reg; June 7, 2019, Susp.	.....do	Do.
Wales, Town of, Erie County	360261	July 23, 1975, Emerg; August 15, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
West Seneca, Town of, Erie County	360262	March 31, 1972, Emerg; February 2, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Williamsville, Village of, Erie County	360263	July 12, 1974, Emerg; March 1, 1982, Reg; June 7, 2019, Susp.	.....do	Do.
Region IV				
Georgia:				
Aragon, City of, Polk County	130152	December 19, 1973, Emerg; September 2, 1988, Reg; June 7, 2019, Susp.	June 7, 2019	June 7, 2019.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Canton, City of, Cherokee County	130039	April 25, 1975, Emerg; July 15, 1988, Reg; June 7, 2019, Susp.	.....do	Do.
Cherokee County, Unincorporated Areas.	130424	February 9, 1976, Emerg; July 15, 1988, Reg; June 7, 2019, Susp.	.....do	Do.
Columbia County, Unincorporated Areas.	130059	October 2, 1975, Emerg; May 1, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Cumming, City of, Forsyth County	130236	July 23, 1975, Emerg; August 1, 1986, Reg; June 7, 2019, Susp.	.....do	Do.
Dallas, City of, Paulding County	130372	December 5, 1996, Emerg; November 8, 1999, Reg; June 7, 2019, Susp.	.....do	Do.
Grovetown, City of, Columbia County ...	130265	June 1, 1976, Emerg; January 28, 1977, Reg; June 7, 2019, Susp.	.....do	Do.
Polk County, Unincorporated Areas	130256	October 7, 1974, Emerg; December 16, 1988, Reg; June 7, 2019, Susp.	.....do	Do.
Rockmart, City of, Polk County	130154	July 3, 1975, Emerg; March 4, 1988, Reg; June 7, 2019, Susp.	.....do	Do.
Woodstock, City of, Cherokee County ..	130264	January 20, 1976, Emerg; July 15, 1988, Reg; June 7, 2019, Susp.	.....do	Do.
Region VI				
Arkansas:				
Jacksonville, City of, Pulaski County	050180	November 26, 1973, Emerg; September 29, 1978, Reg; June 7, 2019, Susp.	.....do	Do.
Little Rock, City of, Pulaski County	050181	March 16, 1973, Emerg; March 4, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Oklahoma:				
Enid, City of, Garfield County	400062	November 2, 1973, Emerg; March 15, 1979, Reg; June 7, 2019, Susp.	.....do	Do.
Kingfisher, City of, Kingfisher County ...	400082	December 23, 1971, Emerg; September 30, 1976, Reg; June 7, 2019, Susp.	.....do	Do.
Kingfisher County, Unincorporated Areas.	400471	January 9, 1987, Emerg; September 18, 1991, Reg; June 7, 2019, Susp.	.....do	Do.
Piedmont, City of, Canadian and Kingfisher Counties.	400027	February 4, 1985, Emerg; February 4, 1985, Reg; June 7, 2019, Susp.	June 7, 2019	June 7, 2019.
Region X				
Idaho:				
Canyon County, Unincorporated Areas	160208	June 17, 1975, Emerg; September 28, 1984, Reg; June 7, 2019, Susp.	.....do	Do.
Middleton, City of, Canyon County	160037	May 22, 1975, Emerg; September 3, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Notus, City of, Canyon County	160147	October 4, 1976, Emerg; March 18, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Parma, City of, Canyon County	160039	July 27, 1976, Emerg; September 30, 1980, Reg; June 7, 2019, Susp.	.....do	Do.
Star, City of, Ada and Canyon Counties	160236	N/A, Emerg; September 6, 2002, Reg; June 7, 2019, Susp.	.....do	Do.
Washington:				
Hoh Indian Tribe, Tribe of, Jefferson County.	530329	April 25, 1997, Emerg; N/A, Reg; June 7, 2019, Susp.	.....do	Do.
Jefferson County, Unincorporated Areas.	530069	April 2, 1975, Emerg; July 19, 1982, Reg; June 7, 2019, Susp.	.....do	Do.
Port Townsend, City of, Jefferson County.	530070	June 11, 1975, Emerg; March 15, 1982, Reg; June 7, 2019, Susp.	June 7, 2019	June 7, 2019.

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

Dated: May 17, 2019.

Eric Letvin,

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

[FR Doc. 2019–11166 Filed 5–28–19; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 84, No. 103
Wednesday, May 29, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0325; Product Identifier 2019–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 airplanes; Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. This proposed AD was prompted by reports of the ram air turbine (RAT) compartment door seal peeling off and tangling up on the RAT rotor during flight test. This proposed AD would require a general visual inspection for peeling-off of the RAT compartment door seal, bonding if necessary, and the rework of the RAT compartment door seal attachment. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 15, 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 Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0325; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

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–2019–0325; Product Identifier 2019–NM–038–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 Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian AD 2019–02–02, dated February 28, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Embraer S.A. Model ERJ 170 airplanes; Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. The MCAI states:

> It has been found the occurrence some events of the Ram Air Turbine (RAT) compartment door seal peeling off and tangling up on the RAT rotor during flight test. We are issuing this [Brazilian] AD to prevent the loss of the RAT function, which associated with an emergency electrical event, can result in the loss of airplane controllability.

Required actions include an inspection for peeling-off condition, bonding as necessary, and rework of the RAT compartment door seal attachment. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0325.

Related Service Information Under 1 CFR Part 51

Embraer S.A. has issued Service Bulletin SB170–53–0142, Revision 01, dated December 12, 2018; Service Bulletin SB190–53–0098, Revision 01, dated December 12, 2018; and Service Bulletin SB190LIN–53–0072, Revision 01, dated January 9, 2019. This service information describes procedures for rework of the RAT compartment door seal attachment, which includes installing fasteners around the RAT door seal attachment. These documents are distinct since they apply to different airplane models.

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

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

Proposed Requirements of This NPRM

This proposed AD would require a general visual inspection for peeling-off of the RAT compartment door seal, bonding if necessary, and the rework of the RAT compartment door seal attachment.

Costs of Compliance

We estimate that this proposed AD affects 570 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
3 work-hours × $85 per hour = $255	$0 *	$255	$145,350

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

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

Authority for This Rulemaking

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

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

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

Embraer S.A.: Docket No. FAA–2019–0325; Product Identifier 2019–NM–038–AD.

(a) Comments Due Date

We must receive comments by July 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. airplanes, identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category.

(1) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes, as identified in Embraer Service Bulletin SB170–53–0142, Revision 01, dated December 12, 2018.

(2) Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and ERJ 190–200 STD, –200 LR, and –200 IGW airplanes, as identified in Embraer Service Bulletin SB190–53–0098, Revision 01, dated December 12, 2018.

(3) Model ERJ 190–100 ECJ airplanes, as identified in Embraer Service Bulletin SB190LIN–53–0072, Revision 01, dated January 9, 2019.

(d) Subject

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

(e) Reason

This AD was prompted by reports of the ram air turbine (RAT) compartment door seal peeling off and tangling up on the RAT rotor during flight test. We are issuing this AD to address the possible loss of the RAT function, which associated with an emergency electrical event, can result in the loss of airplane controllability.

(f) Compliance

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

(g) Inspection and Rework

(1) For airplanes identified in paragraphs (c)(1) and (c)(2) of this AD: Within 750 flight hours after the effective date of this AD, do a general visual inspection of the RAT compartment door seal for peeling-off condition (disbonding), do all applicable bonding, and rework the RAT compartment door seal attachment, in accordance with the Accomplishment Instructions of the service information identified in paragraph (c)(1) or (c)(2) of this AD, as applicable. Do all applicable bonding before further flight.

(2) For airplanes identified in paragraph (c)(3) of this AD: Within 400 flight hours or 6 months after the effective date of this AD, whichever occurs first, do all applicable

bonding, and rework the RAT compartment door seal attachment, in accordance with the Accomplishment Instructions of the service information identified in paragraph (c)(3) of this AD, as applicable. Do all applicable bonding before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Embraer Service Bulletin 170–53–0142, dated December 8, 2017; Embraer Service Bulletin 190–53–0098, dated December 8, 2017; or Embraer Service Bulletin 190LIN–53–0072, dated December 15, 2017; as applicable.

(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 corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) *Required for Compliance (RC):* Except as specified by paragraphs (g) and (i)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(3)(i) and (i)(3)(ii) of this AD apply.

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2019–02–02, dated February 28, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0325.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 15, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–11093 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0223]

RIN 1625–AA08

Special Local Regulation; Zimovia Strait, Wrangell, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation to enable vessel movement restrictions for certain waters of the Zimovia Strait. This action is necessary to provide for the safety of life on these navigable waters near Wrangell Harbor during power boat races on July 4, 2019 and every subsequent year on July 4. This proposed rulemaking would prohibit persons and vessels from transiting through, mooring, or anchoring within the special local regulation race area unless authorized by the Captain of the Port Southeast Alaska or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 28, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0223 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Kristi Sloane, Sector Juneau, Waterways Management Division, Coast Guard: Telephone 907–463–2846, email *D17-SMB-Sector-Juneau-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 16, 2019, the Wrangell Chamber of Commerce notified the Coast Guard that it will be conducting high speed boat races from 11 a.m. to 7 p.m. on July 4, 2019, as part of the Wrangell 4th of July Celebration. The boat races will be taking place approximately 100 yards off of the city dock in Wrangell, AK. The Captain of the Port Southeast Alaska (COTP) has determined that potential hazards associated with the high speed races is a safety concern for anyone within the zone.

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

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation from 11 a.m. to 7 p.m. on July 4, 2019, and every subsequent year on July 4th. The special local regulation would cover all navigable waters within the race area to include Wrangell Harbor entrance and an area extending Northwest along the shoreline approximately 1000 yards and Southwest approximately 500 yards. No vessel or person would be permitted to enter the special local regulation area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic would be able to safely transit around the proposed race area, which would impact a small designated area in Wrangell Harbor for 8 hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the race area, and the rule would allow vessels to seek permission to enter or transit through the race area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 special local regulation area 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 a special local regulation lasting eight (8) hours that would prohibit entry or transit through the area without obtaining permission from the COTP or a designated representative. 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. 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and we 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 § 100.1701 to read as follows:

§ 100.1701 Special Local Regulation; Wrangell 4th of July Celebration Boat Races, Wrangell, AK.

(a) *Regulated area.* The following area is specified as a race area: All waters of Zimovia Straits, Wrangell, AK, approximately 1,000 yards to the Northwest and 500 yards to the Southwest of Wrangell Harbor entrance bounded by the following points: 56°28.077 N, 132°23.074 W, 56°28.440 N, 132°23.685 W, 56°28.277 N, 132°24.020 W, and 56°27.910 N, 132°23.400 W.

(b) *Regulations.* In accordance with the general regulations in this part, the regulated area shall be closed immediately prior to, during and immediately after the event to all persons and vessels not participating in the event and authorized by the event sponsor.

(c) *Authorization.* All persons or vessels who desire to enter the designated area created in this section while it is enforced must obtain permission from the on-scene patrol craft on VHF Ch 9.

(d) *Enforcement period.* This section will be enforced from 11 a.m. to 7 p.m. on July 4, each year unless otherwise specified in the Seventeenth District Local Notice to Mariners.

Dated: May 23, 2019.

Melissa L. Rivera, CAPT,

Acting Commander, Seventeenth Coast Guard District, U.S. Coast Guard.

[FR Doc. 2019–11195 Filed 5–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1710–CN]

RIN 0938–AT67

Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2020 and Updates to the IRF Quality Reporting Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors in the proposed rule that appeared in the April 24, 2019 **Federal Register** entitled, ''Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2020 and Updates to the IRF Quality Reporting Program.''

DATES: This correction to the proposed rule published at 84 FR 17244 through 17335 on April 24, 2019, is applicable May 28, 2019.

FOR FURTHER INFORMATION CONTACT: Kate Brooks, (410) 786–7877.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2019–07885 (84 FR 17244), the proposed rule entitled, ''Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2020 and Updates to the IRF Quality Reporting Program'' (referred to hereafter as the ''FY 2020 IRF PPS proposed rule''), there were technical errors that are identified and corrected in this correcting document. The correction is applicable as of May 28, 2019.

II. Summary of Errors

On page 17329 of the FY 2020 IRF PPS proposed rule, we inadvertently misstated the additional minutes on admission as 7.4 instead of 7.8 and the total minutes of additional clinical staff time as 8.9 instead of 18.9 in our calculation of the estimated burden for the IRF quality reporting program (QRP).

III. Correction of Errors

In FR Doc. 2019–07885 (84 FR 17244), published April 24, 2019, on page 17329, first column, second paragraph, lines 8 through 13, the sentence ''Specifically, we believe that there will be an addition of 7.4 minutes on admission, and 11.1 minutes on discharge, for a total of 8.9 minutes of additional clinical staff time to report data per patient stay.'' is corrected to read ''Specifically, we believe that there will be an addition of 7.8 minutes on admission, and 11.1 minutes on discharge, for a total of 18.9 minutes of additional clinical staff time to report data per patient stay.''.

Dated: May 22, 2019.

Wilma M. Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–11119 Filed 5–28–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 216, 217, 225, 234, and 235

[Docket DARS–2019–0008]

RIN 0750–AJ32

Defense Federal Acquisition Regulation Supplement: Use of Fixed-Price Contracts (DFARS Case 2017–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DOD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that require review and approval for certain cost-reimbursement contract types at specified thresholds and established time periods and the use of firm fixed-price contract types for foreign military sales unless an exception or waiver applies. The comment period on the proposed rule is extended 14 days.

DATES: The comment period for the proposed rule published on April 1, 2019 (84 FR 12179), is extended. Submit comments by June 14, 2019.

ADDRESSES: Submit comments identified by DFARS Case 2017–D024, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2017–D024.'' Select ''Comment Now'' and follow the

instructions provided to submit a comment. Please include ''DFARS Case 2017–D024'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2017–D024 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(D&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2019, DoD published a proposed rule in the **Federal Register** at 84 FR 12179 to implement the requirements of sections 829 and 830 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). Section 829 requires contracting officers to first consider fixed-price contracts, to include fixed-price incentive contracts, when determining contract type and to obtain approval from the head of the contracting activity for—

- Cost-reimbursement contracts in excess of $50 million to be awarded after October 1, 2018, and before October 1, 2019; and
- Cost-reimbursement contracts in excess of $25 million to be awarded on or after October 1, 2019.

Section 830 provides requirements, exceptions, and waiver authority for the use of firm-fixed-price contracts for foreign military sales (FMS). It requires contracting officers to use firm fixed-price contracts unless specified exceptions or a waiver applies. Contracting officers are required to use a different contract type if the FMS customer has established in writing a preference for a different contract type or has requested in writing that a different contract type be used for a specific FMS. The waiver authorizes contracting officers the ability to use other than firm-fixed-price contract type on a case by case basis when determined it is in the best interest of the United States and American taxpayers.

The comment period for the proposed rule is extended 14 days, from May 31, 2019, to June 14, 2019, to provide additional time for interested parties to comment on the proposed DFARS changes.

List of Subjects in 48 CFR Parts 202, 216, 217, 225, 234, and 235

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019–11183 Filed 5–28–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[Docket No. FRA–2014–0033, Notice No. 4]

RIN 2130–AC48

Train Crew Staffing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: FRA withdraws the March 15, 2016 NPRM concerning train crew staffing. In withdrawing the NPRM, FRA is providing notice of its affirmative decision that no regulation of train crew staffing is necessary or appropriate for railroad operations to be conducted safely at this time.

DATES: As of May 29, 2019, the NPRM published on March 15, 2016 (81 FR 13918), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Senior Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Room W31–309, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–493–6038.

SUPPLEMENTARY INFORMATION:

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I. Background

FRA has the authority to regulate train crew staffing pursuant to its broad authority to, ''as necessary, . . . prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' [1] On March 15, 2016, FRA issued an NPRM which proposed regulations establishing minimum requirements for the size of train crew staffs depending on the type of operation (referred to herein as train crew staffing). The proposed rule was not statutorily mandated, but rather, arose out of two rail accidents in 2013 (Lac-Mégantic, Quebec and Casselton, North Dakota).[2] Following the Lac-Mégantic and Casselton accidents, the rail industry, Transportation Safety Board of Canada (TSB of Canada), and DOT undertook a variety of investigations and actions [3] to address rail safety and hazardous materials issues highlighted by those accidents, including FRA's submission of a task to the Railroad Safety Advisory Committee (RSAC).[4]

On August 29, 2013, RSAC accepted a task (No. 13–05) entitled ''Appropriate Train Crew Size'' and formed a Working Group. The task statement noted that in light of the Lac-Mégantic accident, ''FRA believes it is appropriate to review whether train crew staffing practices affect railroad safety.'' Because FRA did not have reliable or conclusive statistical data to suggest whether one-person crew operations are safer or less safe than multiple-person crew operations, FRA hoped that RSAC would provide useful analysis, including conclusive data addressing whether there is a safety benefit or detriment from crew redundancy (*i.e.,* multiple-person train crews) and a report on the costs and benefits associated with crew redundancy.

[1] 49 U.S.C. 20103; 49 CFR 1.89.

[2] The accidents are described in the NPRM. *See* 81 FR 13918, 13921–13924 (Mar. 15, 2016).

[3] Some of those actions are described in the NPRM. *See, e.g.,* 81 FR at 13922 (Mar. 15, 2016).

[4] To adopt a participatory approach to rulemaking, in 1996, FRA first established the RSAC, which is designed to bring together all segments of the rail community to provide advice and recommendations to FRA on railroad safety issues. The RSAC includes representatives from railroads, labor, shippers, industry associations, and other government agencies. The RSAC provides recommendations to FRA on issuing and updating regulations and identifies non-regulatory approaches to improve safety. The most recent RSAC meeting occurred on April 24, 2019.

Despite meeting five times from October 2013 to March 2014, the RSAC Working Group was unable to reach consensus on any recommendation or identify conclusive, statistical data to suggest whether there is a safety benefit or detriment from crew redundancy. As noted in the NPRM, the accident data railroads provided did not capture accidents where the cause or contributing factor was a lack of a second crewmember and thus that data did not aid the Working Group.

Although RSAC was unable to identify data necessary to determine whether a regulation was needed to address train crew staffing, FRA believed it was important to give the broader public an opportunity to provide input on this issue. Accordingly, on March 15, 2016, FRA issued the NPRM with an initial 60-day comment period. FRA then extended the comment period for an additional month [5] and held a public hearing on July 15, 2016. Subsequently, FRA extended the comment period through August 15, 2016.[6]

FRA received nearly 1,600 comments on the NPRM from industry stakeholders and individuals, including current, former, and retired crewmembers. FRA also received comments from the National Transportation Safety Board (NTSB), two members of Congress, and numerous state and local government officials. A general summary of the comments is provided below.[7]

A. Comments Generally Supporting the Proposed Rule

Approximately 1,545 of the written comments were in support of some kind of train crew staffing requirements, although not necessarily the exact proposed requirements found in the NPRM. Two railroad employee unions, the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the International Association of Sheet Metal, Air, Rail and Transportation Workers Transportation Division (SMART TD), submitted comments advocating for changes to the proposed rule. Commenters supportive of the rule commonly sought more stringent requirements that would mandate fewer, or no, exceptions to a two-person train crew, or require the second person be a certified conductor under FRA's requirements in 49 CFR part 242. The four central points of these comments were that: (1) A train crew's duties are too demanding for one person; (2) new technology will make the job more complex; (3) unpredictable scheduling makes fatigue a greater factor when there is only a one-person crew; and (4) the idea of a one-person train crew is seemingly in conflict with the statutory and regulatory requirements for certification of both locomotive engineers and conductors.

The vast majority of comments supporting crew staffing requirements, approximately 1,418, were filed by members of the public on behalf of themselves as individuals. Most of these individual commenters identified themselves as current, former, or retired train crewmembers. These commenters largely provided anecdotal information supporting why they thought trains staffed with fewer than two persons created unsafe conditions. For example, Mike Rankin, who also testified at the public hearing, recalled that he was a conductor working with a locomotive engineer and was able to ''cut'' (separate) a train in half after a grade crossing accident. He stated that his actions likely saved a teenager's life by allowing emergency first responders quick access to the injured teenager though the grade crossing, and enabling hospital treatment much faster than if only one train crewmember had been present and the crossing remained blocked.

A variety of governmental officials and organizations also indicated support for train crew staffing requirements, but with a greater focus on safety for the communities in proximity to railroad tracks, as opposed to the safety of the rail operation itself. For example, FRA heard testimony at the public hearing from Mayor Karen Darch of Barrington, Illinois. Mayor Darch explained that local governments and railroads face the same task of determining appropriate staffing levels, with the local governments focusing on police, fire, and emergency medical services. She testified ''FRA should be concerned that industry may be tempted to bet on its favorable accident odds and make overly hasty staffing decisions to reduce operating costs.'' She asked FRA to ''balance the interests of the public living or traveling with proximity to'' railroad track, because the economies of ''villages, towns, and cities are negatively impacted on a daily basis by train or grade crossing warning device malfunctions that block crossings.'' FRA also heard testimony from Mr. Ronnie C. Harris, Executive Director of the Louisiana Municipal Association, an organization that represents 303 cities, towns, and villages, and two consolidated parish governments in Louisiana. Mr. Harris expressed concern about dangerous commodities being transported by rail on long trains that have reached as long as 11,000 feet in length, and that, without two crewmembers, any blocked crossings would remain blocked for considerably longer than the time it would take a two-person crew to unblock a crossing.[8] In addition to these summarized comments, FRA also received written comments generally supporting the NPRM's proposed requirements from State and local governmental officials, agencies and organizations from at least 16 States.

Two Members of Congress commented on the rule, and they echoed the concerns of State and local governmental commenters, as well as the labor unions. For instance, then-Senator Heidi Heitkamp (North Dakota) testified at the public hearing that, as a representative of a State that moves a lot of oil by rail, the people she represented are concerned about safety and they want to know that their government is doing everything possible from a regulatory standpoint to keep the movement of oil and other hazardous materials safe. Senator Heitkamp testified that she supports a crew staffing rule because she has heard from rail workers in her State that believe having two crew members is essential for their safety and the public's safety. Senator Heitkamp further added that the NPRM provided the right balance as it proposed to allow exceptions grounded in a safety rationale. Then-Rep. Richard M. Nolan (8th District, Minnesota) also commented in support of the rule. Like BLET and SMART TD, Rep. Nolan supported FRA adopting a more stringent requirement that the second crewmember must be a certified conductor.

The Western Organization of Resource Councils (WORC), a regional network of grassroots community organizations that includes 12,200 members, many of whom are farmers, ranchers, and others directly affected by coal, oil, and gas development and who live in communities along rail lines, raised

[5] 81 FR 30229 (May 16, 2016).

[6] 81 FR 39014 (June 15, 2016).

[7] The order the comments are discussed in this document, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of the comments is intended to provide both a general understanding of the overall extent and nature of the comments, as well as give some specific descriptions to provide context. Not every comment is described in this summary though all were thoughtfully considered and, when specific numbers of comments are identified by comment theme or issue, such numbers are approximate as some comments could not be easily grouped with others.

[8] FRA is currently researching the rail operation safety issues associated with freight train length, as well as participating in a U.S. Government Accountability Office (GAO) engagement (code 102557) on the same subject.

concerns with trains being operated with fewer than two crewmembers. WORC commented that the 20-car hazardous materials threshold for ''key trains'' is not stringent enough to adequately protect communities and advocated for a single car threshold for determining whether a second crewmember must be present.

The Environmental Law & Policy Center, an organization dedicated to the protection of the environment, commented that a second crewmember can be critical in containing environmental damage or making operational moves that could prevent accidents, and thus believes it is common sense that two crewmembers are better than one.

The National League of Cities (NLC), an advocate for more than 19,000 cities, villages, and towns, supported the NPRM. NLC commented that local officials are concerned with the significant increase in the volume of hazardous materials shipments combined with rail operators seeking to reduce crew sizes. NLC supported the rule as a response to ''preventable tragedies of the past.''

B. Comments Generally Opposing the Proposed Rule

Railroads, railroad associations, other associations and organizations, and some individual commenters submitted approximately 39 comments that largely took the position that FRA should not regulate train crew size for a variety of reasons. The Association of American Railroads (AAR) commented that FRA's admission as to a lack of safety data meant the rule was ''arbitrary,'' indicating that AAR believed the rule could be determined unlawful through judicial review as a challenge under the Administrative Procedure Act (APA). AAR supported the NTSB's approach encouraging FRA to first modify its accident report form to include the number of crewmembers in the controlling cab at the time of an accident and then use the data it gathers to evaluate the safety adequacy of current regulatory requirements.[9] In addition, AAR noted that the crew staffing issue has historically been left for labor relations and that one-person train crews are currently being used safely. Further, AAR also believed that: (1) The accidents FRA relied on in the NPRM as the basis for the proposed rule did not provide such a basis; (2) FRA massively underestimated the costs of the rule on the industry; and (3) FRA's proposed rule was stifling innovation just as autonomous technologies were emerging and DOT was removing roadblocks to automation in other modes of transportation. AAR also provided research documents to support its position. For instance, AAR funded two studies conducted by Oliver Wyman, a consulting firm. One study, ''Analysis of North American Freight Rail Single-Person Crews: Safety and Economics,'' concluded that safety data analyses show single-person crew operations appear as safe as multiple-person crew operations, if not safer. This study also concluded that the proposed rule would greatly reduce U.S. railroads' ability to control operating costs, without making the industry safer. A second study, ''Assessment of European Railways: Characteristics and Crew-Related Safety,'' critiqued several of the assertions FRA made in its Regulatory Impact Analysis (RIA) on the NPRM, and generally found that European rail operations are comparable to U.S. rail operations and therefore the success of the European network in implementing single-person crew operations can serve as a model for the U.S. rail system. AAR also submitted a comparative risk assessment completed by ICF Incorporated, a consulting firm, titled ''Evaluation of Single Crew Risks,'' which compared traditional Class I railroad two-person crew mainline operations with an FRA-compliant positive train control (PTC) system installed for both one-person- and two-person-crew mainline operations to determine the frequency of accidents that might be impacted by crew size. That assessment found almost no difference in accident rates between one- and two-person operations where PTC has been fully implemented. Union Pacific Railroad and Norfolk Southern Railway were two of the Class I freight railroads represented by AAR that submitted extensive comments raising the same themes.

The American Short Line and Regional Railroad Association (ASLRRA) objected to the NPRM for several reasons. ASLRRA was concerned about the financial impact and paperwork burden the rule would have on short line railroads, which generally are small entities, and questioned whether FRA adequately followed existing legal requirements that protect small businesses. ASLRRA challenged FRA's lack of data and FRA's internal survey of its regional personnel to determine the extent of one-person crew operations. Also, ASLRRA commented that its members would have a competitive disadvantage compared to the trucking industry, if the NPRM was finalized, and it submitted an economic paper suggesting the proposed rule's requirements may induce railroads to reallocate scarce resources away from upgrades to track and equipment.

II. FRA's Decision

While FRA continues to monitor the potential safety impact of train crew staffing, for the reasons provided below, FRA finds that no regulation of train crew staffing is necessary or appropriate at this time. FRA believes that current safety programs and actions taken following the Lac-Mégantic and Casselton accidents are the appropriate avenues for addressing those accidents. Moreover, despite studying this issue in-depth and performing extensive outreach to industry stakeholders and the general public, FRA's statement in the NPRM that it ''cannot provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations'' still holds true today. Accordingly, FRA withdraws the NPRM.

A. There Is No Direct Safety Connection Between Train Crew Staffing and the Lac-Mégantic or Casselton Accidents

Although the Lac-Mégantic and Casselton accidents initially led FRA to review the potential impact of train crew staffing on safety, FRA subsequently determined that no direct conclusions could be drawn about train crew staffing's safety impact on those accidents. As FRA acknowledged in the NPRM, the TSB of Canada's investigation report on the Lac-Mégantic accident concluded it would have been possible for a single operator to apply a sufficient number of hand brakes within a reasonable amount of time to have secured the train involved in that

[9] The NTSB's comment on the NPRM stated that the NTSB had not taken a prior position on crew size but that its accident report investigation into the derailment of National Railroad Passenger Corporation (Amtrak) train no. 188 in Philadelphia, Pennsylvania, on May 12, 2015, would address the issue. In that report, issued on May 17, 2016, the NTSB made a finding that FRA's ''accident database is inadequate for comparing relevant accident rates based on crew size because the information about accident circumstances and number of crewmembers in the controlling cab is insufficient.'' NTSB, RAR–16/02, Derailment of Amtrak Passenger Train 188 at 19 (2016). Therefore, the NTSB made new recommendations to FRA to capture crewmember data and use the data to evaluate the adequacy of current crew size regulations. Id. (citing recommendations R–16–33 and R–16–34). On April 25, 2018, FRA asked RSAC to consider forming a working group to meet and discuss possible changes and updates to FRA's data collection requirements that would include the NTSB's recommendations and RSAC accepted that task. That process is ongoing.

accident.[10] The NPRM summarized TSB of Canada's finding that it could not be concluded that a one-person crew contributed to the accident, and that risk, if any, posed by a one-person crew was not determined to have directly led to the accident. Simply put, TSB of Canada found no direct causal connection between this catastrophic accident and the number of train crewmembers.[11] As FRA acknowledged in the NPRM, ''FRA does not have information that suggests that there have been any previous accidents involving one-person crew operations that could have been avoided by adding a second crewmember.'' [12] That fact remains true today.

While the NPRM noted some indirect connections between crew staffing and railroad safety with respect to the Lac-Mégantic and Casselton accidents, those connections are tangential at best and do not provide a sufficient basis for FRA regulation of train crew staffing requirements. For example, TSB of Canada made indirect connections in the Lac-Mégantic accident between the railroad's poor safety culture and the one train crewmember's alleged failure to properly secure the train. However, in making this connection, TSB of Canada emphasized that a single crewmember could have prevented or helped avoid the catastrophic accident by following the railroad's rule requiring a proper hand brake effectiveness test (*i.e.,* to determine whether a sufficient number of hand brakes were applied to properly secure the train), and that the incident may have been just as likely with multiple train crewmembers and a poor safety culture.

Likewise, after reviewing the facts of the Casselton accident as described in the NPRM,[13] and FRA's final accident investigation report,[14] FRA believes that the same type of positive post-accident mitigating actions were achievable with: (1) Fewer than two crewmembers on the BNSF grain train involved in the accident, and (2) a well-planned, post-accident protocol that quickly brings railroad employees to the scene of an accident.[15] In other words, the facts of the accident suggest that BNSF could have duplicated the mitigating moves of the grain train crew with responding emergency crewmembers. While FRA acknowledges the BNSF key train crew performed well, potentially saving each other's lives, it is possible that one properly trained crewmember, technology, and/or additional railroad emergency planning could have achieved similar mitigating actions. Thus, the indirect safety connections cited in the NPRM do not provide a sufficient basis for FRA regulation of train crew staffing.

FRA's current safety programs and actions taken by FRA and DOT following the Lac-Mégantic and Casselton accidents appropriately address safety concerns raised by those accidents. In direct response to the Lac-Mégantic derailment, FRA has taken the following actions to ensure the safe transportation of products by rail in the United States, with a particular focus on certain hazardous materials that present an immediate danger for communities and the environment in the event of a train accident.

- FRA issued Emergency Order (E.O.) 28 to address the immediate dangers that arise from unattended equipment left unsecured on mainline tracks.[16] E.O. 28 was rescinded on the effective date of a subsequent final rule,[17] discussed further below.
- FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) jointly issued a Safety Advisory to railroads and commodity shippers detailing eight recommended actions the industry should take to better ensure the safe transport of hazardous materials.[18] These recommendations include: Reviewing the details and lessons learned from the Lac Mégantic accident; reviewing crew staffing levels; removing and securing the train's ''reverser'' when unattended; reviewing all railroad operating procedures and testing/operating rules related to securing a train; reviewing Transport Canada's directives to secure and safely operate a train; and conducting a system-wide assessment of security risks when a train is unattended and identifying mitigation efforts for those risks. Additionally, the Safety Advisory recommends testing and sampling of crude oil for proper classification for shipment, as well as a review of all shippers' safety and security plans.
- FRA and PHMSA jointly issued a follow-up Safety Advisory.[19] In this Safety Advisory, PHMSA and FRA reinforced the importance of proper characterization, classification, and selection of a packing group for Class 3 materials, and the corresponding requirements in the federal hazardous materials regulations for safety and security planning. In addition, the Safety Advisory reinforced that FRA expects offerors by rail and rail carriers to revise their safety and security plans required by the federal hazardous materials regulations, including the required risk assessments, to address the safety and security issues identified in FRA's E.O. 28 and the August 7, 2013, joint Safety Advisory.
- FRA and PHMSA jointly issued a Safety Advisory specifically regarding the transportation of petroleum crude oil.[20] More specifically, the Safety Advisory recommends that offerors and carriers of Bakken crude oil by rail tank car select and use the railroad tank car designs with the highest level of integrity reasonably available within their fleet for shipment of these hazardous materials by rail in interstate commerce. Further, the Safety Advisory recommends offerors and carriers of Bakken crude oil avoid the use of older, legacy DOT Specification 111 or CTC 111 tank cars for the shipment of such oil, to the extent reasonably practicable.
- FRA coordinated with PHMSA on a PHMSA final rule adopting new operational requirements for certain trains transporting large quantities of flammable liquids known as ''high-hazard flammable trains''; enhancing safety improvements in tank car design standards; providing a sampling and classification program for unrefined petroleum-based products; and mandating notification requirements.[21]
- FRA issued a final rule to strengthen existing securement regulations, which mitigate risks associated with the unintended

[10] 81 FR at 13921.

[11] Railway Investigation Report R13D0054 at 117–18 (July 6, 2013), *http://bit.ly/VLqVBk.*

[12] 81 FR at 13921.

[13] 81 FR at 13923–24.

[14] *https://www.fra.dot.gov/eLib/details/L18586#p1_z50_gD_lAC_y2013.*

[15] BNSF's post-accident actions included the development of an inventory of emergency response resources along crude oil train routes, identifying locations for staging emergency response equipment, and identifying contacts for community notification. NTSB/Railroad Accident Brief RAB–17/01 at 15–16, *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1701.pdf.*

[16] *See* 78 FR 48218, Aug. 7, 2013.

[17] *See* Securement of Unattended Equipment, 80 FR 47349, 47358, Aug. 6, 2015.

[18] *See* Federal Railroad Administration Safety Advisory 2013–06, Lac-Mégantic Railroad Accident and DOT Safety Recommendations, 78 FR 48224, Aug. 7, 2013, available at *http://www.fra.dot.gov/eLib/details/L04720.*

[19] *See* Federal Railroad Administration Safety Advisory 2013–07, Safety and Security Plans for Class 3 Hazardous Materials Transported by Rail, 78 FR 69745, Nov. 20, 2013, available at *https://www.fra.dot.gov/eLib/details/L04861.*

[20] *See* Federal Railroad Administration Safety Advisory 2014–01, Notice of Safety Advisory, 79 FR 27370, May 13, 2014, available at *https://www.fra.dot.gov/eLib/details/L05222.*

[21] *See* Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High Hazard Flammable Trains, 80 FR 26643, May 8, 2015.

movement of unattended equipment.[22] Additional requirements addressed hazards identified from the Lac-Mégantic accident. The final rule codified much of FRA's E.O. 28, requiring railroads to implement procedures to ensure the proper securement of equipment containing certain types and amounts of hazardous materials when left unattended. For example, the rule contains requirements to ensure that each locomotive left unattended outside of a yard is equipped with an operative exterior locking mechanism and that such locks be applied on the controlling locomotive cab door when a train is transporting tank cars loaded with certain hazardous materials. The rule also provides that such hazardous materials trains may only be left unattended on a main track or siding if justified in a plan adopted by the railroad, accompanied by an appropriate job briefing, and proper securement is made and verified. This rule also requires additional verification of securement if a non-railroad emergency responder may have been in a position to have affected the equipment.

In addition to those actions, FRA previously addressed post-accident protocols for passenger trains through the passenger train emergency preparedness regulation.[23] That rule, typically referred to as the passenger train ''e-prep'' rule, requires each railroad involved in passenger train operations to submit a plan, for FRA approval, that ensures the railroad can effectively and efficiently manage passenger train emergencies. The e-prep rule does not require a specific number of on-board personnel, but rather ensures that railroads can successfully implement the emergency preparedness plans and those operations adopted under the rule; this notice of withdrawal does not have any effect on the emergency preparedness plan requirements.

As identified in the NPRM, FRA is also in the process of developing regulations requiring Class I railroads, other freight railroads with inadequate safety performance, and all passenger railroads to implement safety risk reduction programs (RRPs).[24] These RRPs represent a comprehensive, system-oriented approach to safety that determines an operation's level of risk by identifying and analyzing applicable hazards and developing strategies to mitigate that risk. As part of its RRP, a railroad would identify safety hazards and risks associated with its operations, which could include changes in train crew staffing.[25]

In particular, as new technologies are introduced that may be connected to future reductions in crew size (*e.g.,* PTC technology), railroads will be required to analyze the safety impacts of implementing those technologies as part of their RRPs. As provided in 49 CFR part 270 and proposed in 49 CFR part 271,[26] railroads required to have an RRP shall conduct a technology analysis evaluating current, new, or novel technologies that may mitigate or eliminate hazards and the resulting risks identified through the risk-based hazard management program. The technology analysis must also analyze the safety impact of implementing the identified technologies.

B. Rail Safety Data Does Not Support a Train Crew Staffing Rulemaking

FRA's accident/incident safety data [27] does not establish that one-person operations are less safe than multi-person train crews. Indeed, as FRA noted in the NPRM, existing one-person operations ''have not yet raised serious safety concerns'' and, in fact, ''it is possible that one-person crews have contributed to the [railroads'] improving safety record.'' [28] The NTSB also concurs with that conclusion:

> [T]here is insufficient data to demonstrate that accidents are avoided by having a second qualified person in the cab. In fact, the NTSB has investigated numerous accidents in which both qualified individuals in a two-person crew made mistakes and failed to avoid an accident.[29]

FRA reviewed accident/incident data over a seventeen-year period ending in 2018 and could not determine that any of the accidents/incidents involving a one-person crew would have been prevented by having multiple crewmembers.[30] Moreover, because ''FRA does not capture data that would provide information regarding the total operating mileage for one-person crew operations in the United States (or even two-person operations), it is impossible for FRA to normalize the data and be able to compare the accident/incident rate of one-person operations to that of two-person train crew operations to see if one-person operations appear safer or less safe.'' [31]

For these reasons, this accident/incident data does not support a train crew staffing regulation. Rather, the accident/incident data FRA presented in the NPRM suggests that a railroad with a higher rate of train accidents involving the transportation of hazardous materials could find itself more likely to continue that trend, regardless of the size of the crew, assuming the railroad takes no further action to prevent such accidents from occurring.[32]

Without ''data to prove a direct correlation between higher rates of safety and multiple person crews,'' [33] FRA provided the Working Group with five FRA-sponsored research reports,[34]

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[22] *See* Securement of Unattended Equipment, 80 FR 47349, Aug. 6, 2015.

[23] 49 CFR part 239, Passenger Train Emergency Preparedness; 63 FR 24630 (May 4, 1998).

[24] On August 12, 2016, FRA published a final rule, found at 49 CFR part 270, mandating that commuter and intercity passenger railroads develop and implement a system safety program to improve the safety of their operations. 81 FR 53850. A stay was issued on this final rule until September 4, 2019, to consider petitions for reconsideration. 83 FR 63106. (Dec. 7, 2018). Similarly, on February 27, 2015, FRA published an NPRM that proposes to require each Class I railroad and any freight railroad with inadequate safety performance develop and implement an RRP to improve the safety of their operations. 80 FR 10950.

[25] For example, FRA's proposed risk reduction rule would require, if made final, that a railroad's safety performance evaluation monitors the railroad's system to identify emerging or new risks, which is expected to include a reduction in crew staffing levels. *See* proposed 49 CFR 271.105, 80 FR at 10992–93. FRA's system safety final rule requires that once FRA approves a railroad's plan, the railroad must apply a risk-based hazard analysis to identify hazards such as ''employee levels and schedules'' and must also perform a new analysis whenever there are ''significant operational changes.'' 49 CFR 270.103(q)(1) and (3).

[26] *See* 49 CFR part 270.103 and proposed 49 CFR 271.109, 80 FR at 10993.

[27] 49 CFR part 225, Railroad Accidents/Incidents: Reports Classification, and Investigations.

[28] 81 FR at 13950 and 13932.

[29] NTSB, RAR–16/02, Derailment of Amtrak Passenger Train 188, at 18 (2016).

[30] FRA presented safety data to the RSAC covering nearly 12 years of railroad safety data between January 2002 and October 2013. The data was developed by reviewing accident/incident reports submitted to FRA. As stated in the NPRM, the ''accident/incident reports involving one-person train crews . . . do not clearly help determine that the accident/incident would have been prevented by having multiple crewmembers.'' 81 FR at 13931. In a subsequent review of the data through 2018, FRA again could not conclude that any of the accidents/incidents involving a one-person crew would have been prevented by having multiple crewmembers.

[31] 81 FR at 13931.

[32] 81 FR 13930–32.

[33] 81 FR at 13919.

[34] The following is a list of the five research reports and their location on FRA's website:

(1) *Cognitive and Collaborative Demands of Freight Conductor Activities: Results and Implications of a Cognitive Task Analysis—Human Factors in Railroad Operations,* Final Report, dated July 2012, DOT/FRA/ORD–12/13. The report was prepared and researched by the John A. Volpe National Transportation Systems Center (Volpe Center). *http://www.fra.dot.gov/eLib/details/L04331.*

(2) *Rail Industry Job Analysis: Passenger Conductor,* Final Report, dated Feb. 2013, DOT/FRA/ORD–13/07. The report was prepared and researched by the Volpe Center. *http://www.fra.dot.gov/eLib/details/L04321.*

(3) *Fatigue Status in the U.S. Railroad Industry,* Final Report, dated Feb. 2013, DOT/FRA/ORD–13/

Continued

as well as one Transportation Research Board (TRB) conference report that contained presentations from multiple research reports, before the first meeting of the RSAC in October 2013. While these reports identify safety issues that railroads should consider when evaluating any reduction in the number of train crewmembers or a shift in responsibilities among those crewmembers, the reports do not indicate that one-person crew operations are less safe and therefore do not form a sufficient basis for a final rule on crew staffing.

C. Comments to the NPRM Do Not Support a Train Crew Staffing Rulemaking

Based on its review and careful consideration of all the comments to the NPRM, FRA has determined that no regulation of train crew staffing is necessary or appropriate at this time. The comments do not provide conclusive data suggesting that there have been any previous accidents involving one-person crew operations that could have been avoided by adding a second crewmember or that one-person crew operations are less safe.

While the comments note some indirect connections between crew staffing and railroad safety, such as post-accident response or handling of disabled trains, those indirect connections do not provide a sufficient basis for FRA regulation of train crew staffing requirements. Moreover, FRA believes the indirect safety connections cited in the comments could be achieved with fewer than two crewmembers with a well-planned, disabled-train/post-accident protocol that quickly brings railroad employees to the scene of a disabled train or accident. FRA expects railroads would consider these protocols as mitigation options under their RRPs when evaluating any changes to train crew staffing levels. Thus, FRA believes that its previously discussed current safety programs, along with other actions taken by FRA and DOT, more appropriately address the safety concerns raised by the commenters.

FRA also does not concur with commenters who assert that the idea of a one-person train crew is seemingly in conflict with the statutory and regulatory requirements for certification of both locomotive engineers and conductors. There are no specific statutes or regulations prohibiting a one-person train crew, nor is there a specific requirement that would prohibit autonomous technology from operating a locomotive or train in lieu of a certified locomotive engineer. However, the NPRM identified several regulations that a railroad would need to be cognizant of when adjusting its crew staffing levels, while acknowledging that none of those regulations requires a minimum number of crewmembers to achieve compliance.

D. A Train Crew Staffing Rule Would Unnecessarily Impede the Future of Rail Innovation and Automation

FRA's current regulatory regime is largely based on traditional or ''legacy'' equipment and systems [35] that railroads are, in many instances, moving away from. DOT has recognized that the integration of technology and automation across our transportation system has the potential to increase productivity, facilitate freight movement, create new kinds of jobs, and, most importantly, improve safety significantly by reducing accidents caused by human error.[36] FRA's accident/incident data for calendar year 2017 shows that railroads reported 1,710 train accidents not occurring at highway grade crossings, and the most frequent of which, 38 percent of those accidents (650), were attributable to human factor causes.[37] The potential benefits of automation will certainly bring new challenges, requiring active steps to prepare for the future by engaging with new technologies to ensure safety without hampering innovation.

DOT's approach to achieving safety improvements begins with a focus on removing unnecessary barriers and issuing voluntary guidance, rather than regulations that could stifle innovation. In furtherance of these goals, on March 29, 2018, FRA published a request for information (RFI) on the subject of automation in the railroad industry.[38] The RFI's purpose was to facilitate comments that would help FRA understand the current stage and development of automated railroad operations and how the agency can best position itself to support the integration and implementation of new automation technologies to increase the safety, reliability, and capacity of the nation's railroad system. Some commenters to the RFI identified the train crew staffing rulemaking as a potential barrier to automation or other technology improvements. Similar comments were submitted to the train crew staffing NPRM itself. FRA generally agrees with those comments and, without sufficient safety data showing the need for such a rule, concurs that the NPRM should be withdrawn.

By requiring a minimum number of crewmembers for certain trains, finalizing the train crew staffing rule would have departed from FRA's long-standing regulatory approach of not endorsing any particular crew staffing arrangement.[39] FRA completely disagrees with the comments suggesting that there is a specific statutory or regulatory requirement that a certified locomotive engineer and a certified conductor are required on each locomotive or train. The lack of a legal prohibition means that each railroad is free to make train crew staffing decisions as part of their operational management decisions, which would include consideration of technological advancements and any applicable collective bargaining agreements. However, the NPRM identified several regulations that a railroad would need to be cognizant of when adjusting its crew staffing levels, while acknowledging that none of those regulations requires a minimum number of crewmembers to achieve compliance. For example, the NPRM noted that when complying with the requirements in 49 CFR 218.99 for performing a shoving or pushing movement, a second crewmember routinely provides point protection. However, the NPRM also noted that the point protection rule permits use of cameras for performing these movements.[40]

06. *www.fra.dot.gov/Elib/Document/2929.* The report was prepared and researched by QinetiQ North America and FRA's Office of Research and Development.

(4) *Technology Implications of a Cognitive Task Analysis for Locomotive Engineers—Human Factors in Railroad Operations,* Final Report, dated Jan. 2009, DOT/FRA/ORD–09/03. The report was prepared and researched by the Volpe Center. *www.fra.dot.gov/Elib/Document/381.*

(5) *Using Cognitive Task Analysis to Inform Issues in Human Systems Integration in Railroad Operations—Human Factors in Railroad Operations,* Final Report, dated May 2013, DOT/FRA/ORD–13/31. The report was prepared and researched by the Volpe Center. *http://www.fra.dot.gov/eLib/details/L04589.*

[35] Notable exceptions are 49 CFR part 236, subparts H and I, which contain FRA's standards for processor-based signal and train control systems and positive train control regulations.

[36] DOT's ''Preparing for the Future of Transportation,'' Automated Vehicles 3.0 (Oct. 4, 2018).

[37] The other causes cited were track (27 percent), miscellaneous (18 percent), motive power/equipment (14 percent), and signal caused, all track types (3 percent). *https://safetydata.fra.dot.gov/officeofsafety/default.aspx.*

[38] 83 FR 13583.

[39] For example, FRA's conductor certification final rule provides that: ''It is FRA's intent that this conductor certification regulation . . . be neutral on the crew consist issue. Nothing in part 242 should be read as FRA's endorsement of any particular crew consist arrangement.'' 76 FR 69802, 69825 (Nov. 9, 2011).

[40] 81 FR at 13932 (citing 49 CFR 218.99).

E. FRA's Withdrawal Is an Affirmative Decision Not To Regulate With the Intention To Preempt State Laws

In issuing this withdrawal, FRA has determined that no regulation of train crew staffing is necessary or appropriate at this time and intends for the withdrawal to preempt all state laws attempting to regulate train crew staffing in any manner. FRA believes that nine states have laws in place regulating crew size in some manner: California, West Virginia, and Wisconsin require a minimum of two crew members for certain trains;[41] Arizona, California, Ohio, and Oregon have ''full crew'' requirements for certain trains;[42] and Massachusetts, New Jersey, and Washington impose other restrictions.[43] FRA also believes that laws regulating crew size have been proposed in 30 states since 2015.[44]

Provisions of the federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (FRSA), repealed and recodified at 49 U.S.C. 20106, mandate that laws, regulations, and orders ''related to railroad safety'' be nationally uniform.[45] The FRSA provides that a state law is preempted where FRA, under authority delegated from the Secretary of Transportation, ''prescribes a regulation or issues an order covering the subject matter of the State requirement.''[46] A federal regulation or order covers the subject matter of a state law where ''the federal regulations substantially subsume the subject matter of the relevant state law.''[47] A federal regulation or order need not be identical to the state law to cover the same subject matter. The Supreme Court has held preemption can be found from ''related safety regulations'' and ''the context of the overall structure of the regulations.''[48] Federal and state actions cover the same subject matter when they address the same railroad safety concerns.[49] FRA intends this notice of withdrawal to cover the same subject matter as the state laws regulating crew size and therefore expects it will have preemptive effect.

This notice of withdrawal provides what the Supreme Court referred to as ''negative'' or ''implicit'' preemption. The Court recognized that ''where failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute,'' any state law enacting such a regulation is preempted.[50]

After closely examining the train crew staffing issue and conducting significant outreach to industry and public stakeholders, FRA determined that issuing any regulation requiring a minimum number of train crewmembers would not be justified because such a regulation is unnecessary for a railroad operation to be conducted safely at this time. Thus, this notice of withdrawal provides FRA's determination that no regulation of train crew staffing is appropriate and that FRA intends to negatively preempt any state laws concerning that subject matter.

Issued in Washington, DC, under the authority set forth in 49 CFR 1.89(b).

Ronald L. Batory,

Administrator.

[FR Doc. 2019–11088 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–06–P

[41] Cal. Lab. Code § 6903(a); W. Va. Code Ann. § 24–3–1b(a); Wis. Stat. Ann. § 192.25(2).

[42] Ariz. Rev. Stat. Ann. § 40–881; Cal. Lab. Code § 6901(a); Ohio Rev. Code Ann. § 4999.06; Or. Rev. Stat. Ann. § 824.300.

[43] Mass. Gen. Laws Ann. ch. 160, § 185; N.J. Stat. Ann. § 48:12–155; Wash. Rev. Code Ann. § 81.40.010(1).

[44] 2016 Ala. S.B. 239; 2019 Ariz. H.B. 2102; 2019 Colo. H.B. 1034; 2019 Geor. H.B. 190; 2019 Idaho H.B. 53; 2019 Ill. S.B. 24; 2016 Ind. H.B. 1029; 2019 Iowa S.F. 248; 2015 Kan. S.B. 164; 2019 Ky. H.B. 111; 2016 La. H.B. 778; 2019 Maine H.P. 521; 2019 Md. H.B. 66; 2017 Mass. S.B. 1953; 2019 Minn. S.F. 263; 2019 Mo. H.B. 179; 2019 Neb. L.B. 611; 2017 Nev. S.B. 427; 2019 N.M. H.B. 244; 2015 N.Y. S.B. 7435; 2015 N.D. H.B. 1357; 2017 Ohio S.B. 74; 2017 Okla. H.B. 1195; 2017 Pa. H.B. 1585; 2018 S.D. H.B. 1150; 2019 Tex. H.B. 742; 2019 Utah S.B. 176; 2018 Va. H.B. 1789; 2019 Wash. S.B. 5877; 2019 Wyo. H.B. 104.

[45] 49 U.S.C. 20106(a)(1).

[46] 49 U.S.C. 20106(a)(2). While the FRSA also includes a narrow savings clause for ''essentially local safety hazards'' which might except an otherwise preempted state law, that clause would not apply to the state laws at issue which would apply statewide and therefore do not address an ''essentially local'' hazard. 49 U.S.C. 20106(a)(2); H.R. Rep. No. 1194, 91st Cong., 2d Sess. (1970) (''these local hazards would not be statewide in character''); *see also Norfolk & Western Ry. Co.* v. *Public Utilities Com'n of Ohio,* 926 F.2d 567, 571 (6th Cir. 1991) and *National Ass'n of Regulatory Util. Comm'rs* v. *Coleman,* 542 F.2d 11, 13 (3d Cir. 1976) (both holding that the local hazard exception cannot be applied to uphold the application of a statewide rule).

[47] *CSX Transportation, Inc.* v. *Easterwood,* 507 U.S. 658, 664–65 (1993).

[48] *Easterwood,* 507 U.S. at 674.

[49] *Burlington Northern R.R.* v. *Montana,* 880 F.2d 1104, 1105 (9th Cir. 1989).

[50] *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 178 (1978) (quoting *Bethlehem Steel Co.* v. *New York State Labor Relations Board,* 330 U.S. 767, 774 (1947)). For example, FRA examined the effectiveness of strobe and oscillating lights on locomotives and concluded they were not effective in reducing grade-crossing accidents and mandating them was therefore unjustified. 48 FR 20257 (May 5, 1983). When examined by the Ninth Circuit, the court held that ''[u]nder [FRSA], where the FRA has rejected the requirement of strobe or oscillating lights, a state may not require them.'' *Marshall* v. *Burlington Northern, Inc.,* 720 F.2d 1149, 1154 (9th Cir. 1983).

Notices

Federal Register
Vol. 84, No. 103
Wednesday, May 29, 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

May 22, 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: 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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 June 28, 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), *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.

Food and Nutrition Service

Title: Annual State Report of Verification of SNAP Participants.

OMB Control Number: 0584–0605.

Summary of Collection: Section 4032 of the Agriculture Act of 2014 mandates States agencies will ''submit to the Secretary a report containing sufficient information for the Secretary to determine whether the State agency has, for the most recently concluded fiscal year preceding that annual date, verified that the State agency in that fiscal year–(1) did not issue benefits to a deceased individual; and (2) did not issue benefits to an individual who had been permanently disqualified from receiving benefits.''

Need and Use of the Information: The purpose of the Annual State Report of Verification of SNAP Participants is to ensure that no person who is deceased, or has been permanently disqualified from SNAP, improperly received SNAP benefits for the fiscal year preceding the report submission.

State agency will use this information performing mandated checks against both eDRS and the SSA Death Master File, send an email to their FNS Regional Office SNAP Program Director to provide the verification, and any additional recordkeeping associated with this burden. States must perform this verification once a year and must retain these records for 3 years. FNS will use this information to ensure compliance and program integrity.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Annual Responses: 106.

Total Burden Hours: 57.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting.

OMB Control Number: 0584–0608.

Summary of Collection: This requirement codified Section 4013 of the Agricultural Act of 2014 (Pub. L. 113–79). FNS amended the SNAP regulations at 7 CFR 272 to require State agencies to access employment data through the National Directory of New Hires (NDNH) at the time of certification, including recertification, to determine eligibility status and appropriate benefit amount for SNAP applicants.

Need and Use of the Information: National Directory of New Hires, State agencies are required to compare identifiable information about each household member against data from the NDNH at the time of certification and recertification. This comparison will be used to determine the eligibility status of the household and determine the correct benefit amount the household should receive.

The data reported on the Program Activity Statement (FNS 366B) enables FNS to identify areas that may need improvement and to provide more effective technical assistance to State agencies. An increase in reporting frequency will allow for greater access to timely program data. It will help States, FNS, and other stakeholders identify trends, inconsistencies and inefficiencies earlier in each fiscal year. FNS uses the data to monitor State agency activity levels and performance, ensure program integrity and to identify and provide technical assistance to State agencies in need of performance improvements.

Description of Respondents: State, Local, or Tribal Government; Individual or households.

Number of Respondents: 891,125.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Annual Responses: 12,277,204.

Total Burden Hours: 252,433.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–11069 Filed 5–28–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request

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

Agency: Bureau of Industry and Security.

Title: BIS Program Evaluation.

Form Number(s): 0694–0125.

OMB Control Number: 0694–0125.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 500.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 10 minutes.

Needs and Uses: This collection of information is necessary to obtain feedback from seminar participants. This information helps BIS determine the effectiveness of its programs and identifies areas for improvement. The gathering of performance measures on the BIS seminar program is also essential in meeting the agency's responsibilities under the Government Performance and Results Act (GPRA).

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Sheleen Dumas,

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

[FR Doc. 2019–11114 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*e.g.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to Commerce no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2020.

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Uncoated Paper, A–351–842	3/1/18–2/28/19
International Paper do Brasil Ltda	
International Paper Exportadora Ltda	
Suzano Papel e Celulose S.A	
India: Certain Frozen Warmwater Shrimp,[5] A–533–840	2/1/18–1/31/19
Indonesia: Uncoated Paper, A–560–828	3/1/18–2/28/19
APRIL Fine Paper Macao Offshore Limited	
APRIL Fine Paper Trading Pte. Ltd	
APRIL International Enterprise Pte. Ltd	
A P Fine Paper Trading (Hong Kong) Limited	
PT Anugerah Kertas Utama	
PT Riau Andalan Kertas	
PT Asia Pacific Rayon	
PT Sateri Viscose International	
Portugal: Uncoated Paper, A–471–807	3/1/18–2/28/19
The Navigator Company, S.A	
Thailand: Circular Welded Carbon Steel Pipes and Tubes, A–549–502	3/1/18–2/28/19
Apex International Logistics	
Aquatec Maxcon Asia	
Asian Unity Part Co., Ltd	
Bis Pipe Fitting Industry Co., Ltd	
Blue Pipe Steel Center	
Blue Pipe Steel Center Co. Ltd	
Chuhatsu (Thailand) Co., Ltd	
CSE Technologies Co., Ltd	
Expeditors International (Bangkok)	
Expeditors Ltd	
FS International (Thailand) Co., Ltd	
K Line Logistics	
Kerry-Apex (Thailand) Co., Ltd	
Oil Steel Tube (Thailand) Co., Ltd	
Otto Ender Steel Structure Co., Ltd	
Pacific Pipe and Pump	
Pacific Pipe Public Company Limited	
Pacific Pipe Public Company Limited	
Panalpina World Transport Ltd	
Polypipe Engineering Co., Ltd	
Saha Thai Steel Pipe (Public) Company, Ltd	
Saha Thai Steel Pipe Public Co., Ltd	
Schlumberger Overseas S.A	
Siam Fittings Co., Ltd	
Siam Steel Pipe Co., Ltd	
Sino Connections Logistics (Thailand) Co., Ltd	
Thai Malleable Iron and Steel	
Thai Oil Group	
Thai Oil Pipe Co., Ltd	
Thai Premium Pipe Co., Ltd	
Thai Premium Pipe Co., Ltd	
Vatana Phaisal Engineering Company	
Visavakit Patana Corp., Ltd	
The People's Republic Of China: Certain Amorphous Silica Fabric, A–570–038	3/1/18–2/28/19
Access China Industrial Textile (Pinghu) Inc	
Access China Industrial Textile (Shanghai) Inc	
Acmetex Co., Ltd	
Beijing Great Pack Materials Co., Ltd	
Beijing Langingji Engineering Tech. Co., Ltd	
Beijing Tianxing Ceramic Fiber Composite Materials Corp	
Changshu Yaoxing Fiberglass Insulation Products Co., Ltd	
Changzhou Kingze Composite Materials Co., Ltd	
Changzhou Utek Composite Co	
Chengdu Chang Yuan Shun Co., Ltd	
Chengdu Youbang Hengtai New Material Co., Ltd	
China Beihai Fiberglass Co., Ltd	
China National Building Materials International Corporation	
China Yangzhou Guo Tai Fiberglass Co., Ltd	
Chongqing Polycomp International Corp	
Chongqing Tenways Material Corporation	
Chongqing Yangkai Import & Export Trade Co., Ltd	
Cixi Sunrise Sealing Material Co., Ltd	
Fujian Minshan Fire-Fighting Co., Ltd	
Ganzhou Guangjian Fiberglass Co., Ltd	
Grant Fiberglass Co., Ltd	

	Period to be reviewed
Jaining Jiete Fiberglass Fabric Co., Ltd	
Haining Jorhom Imp. & Ex. Co., Ltd	
Hebei Yuniu Fiberglass Manufacturing Co., Ltd	
Hebei Yuyin Trade Co., Ltd	
Hengshui Aohong International Trading Co., Ltd	
Hitex Insulation (Ningbo) Co., Ltd	
Huatek New Material Inc	
Jiangsu Jiuding New Material Co., Ltd	
Jiangxi Aidmer Seal & Packing Co., Ltd	
Jiujiang Huaxing Glass Fiber Co., Ltd	
Langfang Wanda Industrial Co., Ltd	
Lanxi Joen Fiberglass Co., Ltd	
Mowco Industry Limited	
Nanjing Debeili New Materials Co., Ltd	
Naning Tianyuan Fiberglass Material Co., Ltd	
New Fire Co., Ltd	
Ningbo EAS Material Co., Ltd	
Ningbo Firewheel Thermal Insulation & Sealing Co., Ltd	
Ningbo Fitow High Strength Composites Co., Ltd	
Ningbo Universal Star Industry & Trade Limited	
Ningguo BST Thermal Protection Products Co., Ltd	
Qingdao Feelongda Industry & Trade Co., Ltd	
Qingdao Junfeng Industry Company Limited	
Qingdao Meikang Fireproof Materials Co., Ltd	
Qingdao Shishuo Industry Co., Ltd	
Rugao City Ouhua Composite Material Co., Ltd	
Rugao Nebula Fiberglass Co., Ltd	
Shanghai Bonthe Insulative Material CO., Ltd	
Shanghai Horse Construction Co., Ltd	
Shanghai Industrial Products Imp. & Exp. Co., Ltd	
Shanghai Liankun Electronics Material Co., Ltd	
Shanghai Porcher Industries Co., Ltd	
Shanghai Suita Environmental Protection Technology Co., Ltd	
Shangqiu Huanyu Fiberglass Co., Ltd	
Shaoxing Sunway Tools & Hardware Import & Export Co., Ltd	
Shengzhou Top-Tech New Material Co., Ltd	
Shnzhen Core-Tex Composite Materials Co., Ltd	
Shenzhen Songxin Silicone Products Co., Ltd	
Suntex Composite Industrial Co., Ltd	
Suretex Composite Co., Ltd	
Taian Fibtex Trade Co., Ltd	
Taian Juli Composite Materials Co., Ltd	
Taixing Chuanda Plastic Co., Ltd	
Taixing Kaixin Composite Materials Co., Ltd	
Taixing Ruifeng Rubber Products Co., Ltd	
Taixing Vichen Composite Material Co., Limited	
TaiZhou Xinxing Fiberglass Products Co., Ltd	
Tenglong Sealing Products Manufactory Yuyao	
Texaspro (China) Company	
Tianjin Bin Jin Fiberglass Products Co., Ltd	
Tongxiang Suretex Composite Co., Ltd	
Wallcan Industries Co., Ltd	
Wuhan Dinfn Industries Co., Ltd	
Wuxi First Special-Type Fiberglass Co., Ltd	
Wuxi Xingxiao Hi-tech Material Co., Ltd	
Yuyao Feida Insulation Sealing Factory	
Yuyao Tianyi Special Carbon Fiber Co., Ltd	
Zibo Irvine Trading Co., Ltd	
Zibon Yao Xing Fire-Resistant and Heat Preservation Material Co., Ltd	
Zibo Yuntai Furnace Technology Co., Ltd	
The People's Republic of China: Carbon and Alloy Steel Cut-To-Length Plate, A–570–047	3/1/18–2/28/19
Jiangsu Tiangong Tools Company LTD	
The People's Republic of China: Glycine, A–570–836	3/1/18–2/28/19
Baoding Mantong Fine Chemistry Co., Ltd	
Chemsteel Corporation	
Enzyme Bioscience Private Limited	
Innospec Ltd	
JC Chemicals Ltd	
Kumar Industries	
Mulji Mehta Enterprises	
Newtrend Food Ingredient (Thailand) Co. Ltd	
Studio Disrupt	
V Sanguine Exim	

	Period to be reviewed
Countervailing Duty Proceedings	
India: Fine Denier Polyester Staple Fiber, A–533–876	11/6/17–12/31/18
Reliance Industries Limited	
India: Certain Cold-drawn Mechanical Tubing of Carbon and Alloy Steel,[6] C–533–874	9/25/2017–12/31/2018
Indonesia: Uncoated Paper, C–560–829	1/1/18–12/31/2018
APRIL Fine Paper Macao Offshore Limited	
APRIL International Enterprise Pte. Ltd	
A P Fine Paper Trading (Hong Kong) Limited	
PT Anugerah Kertas Utama	
PT Riau Andalan Kertas	
PT Asia Pacific Rayon	
PT Sateri Viscose International	
The People's Republic of China: Certain Amorphous Silica Fabric, C–570–039	1/1/18–12/31/18
Access China Industrial Textile (Pinghu) Inc. (ACIT)	
Access China Industrial Textile (Shanghai) Inc. (ACIT)	
Acmetex Co., Ltd	
Beijing Great Pack Materials Co., Ltd	
Beijing Langingji Engineering Tech. Co., Ltd	
Beijing Tianxing Ceramic Fiber Composite Materials Corp	
Changshu Yaoxing Fiberglass Insulation Products Co., Ltd	
Changzhou Kingze Composite Materials Co., Ltd	
Changzhou Utek Composite Co	
Chengdu Chang Yuan Shun Co., Ltd	
Chengdu Youbang Hengtai New Material Co., Ltd	
China Beihai Fiberglass Co., Ltd	
China National Building Materials International Corporation	
China Yangzhou Guo Tai Fiberglass Co., Ltd	
Chongqing Polycomp International Corp. (CPIC)	
Chongqing Tenways Material Corporation	
Chongqing Yangkai Import & Export Trade Co., Ltd	
Cixi Sunrise Sealing Material Co., Ltd	
Fujian Minshan Fire-Fighting Co., Ltd	
Ganzhou Guangjian Fiberglass Co., Ltd	
Grant Fiberglass Co., Ltd	
Jaining Jiete Fiberglass Fabric Co., Ltd	
Haining Jorhom Imp. & Ex. Co., Ltd	
Hebei Yuniu Fiberglass Manufacturing Co., Ltd	
Hebei Yuyin Trade Co., Ltd	
Hengshui Aohong International Trading Co., Ltd	
Hitex Insulation (Ningbo) Co., Ltd	
Huatek New Material Inc	
Jiangsu Jiuding New Material Co., Ltd	
Jiangxi Aidmer Seal & Packing Co., Ltd	
Jiujiang Huaxing Glass Fiber Co., Ltd	
Langfang Wanda Industrial Co., Ltd	
Lanxi Joen Fiberglass Co., Ltd	
Mowco Industry Limited	
Nanjing Debeili New Materials Co., Ltd	
Naning Tianyuan Fiberglass Material Co., Ltd	
New Fire Co., Ltd	
Ningbo EAS Material Co., Ltd	
Ningbo Firewheel Thermal Insulation & Sealing Co., Ltd	
Ningbo Fitow High Strength Composites Co., Ltd	
Ningbo Universal Star Industry & Trade Limited	
Ningguo BST Thermal Protection Products Co., Ltd	
Qingdao Feelongda Industry & Trade Co., Ltd	
Qingdao Junfeng Industry Company Limited.	
Qingdao Meikang Fireproof Materials Co., Ltd	
Qingdao Shishuo Industry Co., Ltd	
Rugao City Ouhua Composite Material Co., Ltd	
Rugao Nebula Fiberglass Co., Ltd	
Shanghai Bonthe Insulative Material CO., Ltd	
Shanghai Horse Construction Co., Ltd	
Shanghai Industrial Products Imp. & Exp. Co., Ltd	
Shanghai Liankun Electronics Material Co., Ltd	
Shanghai Porcher Industries Co., Ltd	
Shanghai Suita Environmental Protection Technology Co., Ltd	
Shangqiu Huanyu Fiberglass Co., Ltd	
Shaoxing Sunway Tools & Hardware Import & Export Co., Ltd	
Shengzhou Top-Tech New Material Co., Ltd	
Shnzhen Core-Tex Composite Materials Co., Ltd	
Shenzhen Songxin Silicone Products Co., Ltd	

	Period to be reviewed
Suntex Composite Industrial Co., Ltd	
Suretex Composite Co., Ltd	
Taian Fibtex Trade Co., Ltd	
Taian Juli Composite Materials Co., Ltd	
Taixing Chuanda Plastic Co., Ltd	
Taixing Kaixin Composite Materials Co., Ltd	
Taixing Ruifeng Rubber Products Co., Ltd	
Taixing Vichen Composite Material Co., Limited	
TaiZhou Xinxing Fiberglass Products Co., Ltd	
Tenglong Sealing Products Manufactory Yuyao	
Texaspro (China) Company	
Tianjin Bin Jin Fiberglass Products Co., Ltd	
Tongxiang Suretex Composite Co., Ltd	
Wallcan Industries Co., Ltd	
Wuhan Dinfn Industries Co., Ltd	
Wuxi First Special-Type Fiberglass Co., Ltd	
Wuxi Xingxiao Hi-tech Material Co., Ltd	
Yuyao Feida Insulation Sealing Factory	
Yuyao Tianyi Special Carbon Fiber Co., Ltd	
Zibo Irvine Trading Co., Ltd	
Zibon Yao Xing Fire-Resistant and Heat Preservation Material Co., Ltd	
Zibo Yuntai Furnace Technology Co., Ltd	
Turkey: Circular Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/18–12/31/18
Borusan Birlesik Boru Fabrikalair San ve Tic	
Borusan Gemlik Boru Tesisleri A.S	
Borusan Holding	
Borusan Ihracat Ithalat ve Dagitim A.S	
Borusan Istikbal Ticaret T.A.S	
Borusan Ithicat ve Dagitim A.S	
Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S	
Borusan Mannesmann	
Borusan Mannesmann Boru Sanayi ve Ticaret A.S	
Borusan Mannesmann Pipe US, Inc	
Borusan Mannesmann Yatirim Holding	
Cagil Makina Sanayi ve Ticaret A.S	
Cayirova Boru Sanayi ve Ticaret A.S	
Cimtas Boru Imalatlari ve Ticaret Sirketi	
Eksen Makina	
Erbosan Erciyas Boru Sanayi ve Ticaret A.S	
Guner Eksport	
Guven Celik Born San. Ve Tic. Ltd	
Guven Steel Pipe	
HDM Celik Boru Sanayi ve Ticaret Ltd Sti	
Kalibre Boru Sanayi ve Ticaret AS	
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	
Net Boru Sanayi ve Dis Ticaret Koll. Sti	
Noksel Celik Boru Sanayi AS	
Perfektup Ambalaj San. ve Tic. A.S	
Schenker Arkas Nakliyat ve Ticaret A.S	
Toscelik Metal Ticaret A.S	
Toscelik Profil ve Sac Endustrisi A.S	
Tosyali Dis Ticaret A.S	
Tubeco Pipe and Steel Corporation	
Umran Celik Born Sanayii A.S	
Umran Steel Pipe Inc	
Vespro Muhendislik Mimarlik Danismanlik Sanayi ve Ticaret AS	
Yucel Boru ve Profil Endustrisi A.S	
Yucelboru Ihracat Ithalat ve Pazarlama A.S	
Suspension Agreements	
None	

[5] On May 2, 2019, Commerce initiated the 2018–2019 administrative review of Certain Frozen Warmwater Shrimp from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777. In the notice of initiation, Commerce inadvertently made the following errors: (1) We included one company twice (as Bell Exim Private Limited (Bell Foods (Marine Division)) and Bell Exim Pvt. Ltd.); (2) we failed to include Nekkanti Mega Food Park Private Limited; and (3) we made a typographical error in the name of Balasore Marine Exports Private Limited (listed as Belasore Marine Exports Private Limited). Accordingly, we are initiating this administrative review for: (1) Bell Exim Private Limited (Bell Foods (Marine Division)) only once; (2) Nekkanti Mega Food Park Private Limited; and (3) Balasore Marine Exports Private Limited.

[6] On May 2, 2019, Commerce initiated the 2017–2018 administrative review of Certain Cold-drawn Mechanical Tubing of Carbon and Alloy Steel from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777. In the notice of initiation, Commerce inadvertently made a typographical error in the name of Goodluck India Limited (listed as Good Luck India Limited). Accordingly, we are initiating

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[7] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[8] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. *See* 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: May 22, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–11131 Filed 5–28–19; 8:45 am]

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this administrative review for Goodluck India Limited.

[7] *See* section 782(b) of the Act.

[8] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments in Part; 2017

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

SUMMARY: The Department of Commerce (Commerce) determines that eight of the 13 companies under review have not demonstrated eligibility for a separate rate and the other five companies under review had no shipments of subject merchandise during the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: Applicable May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Howard Smith, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5193.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2018, Commerce published its *Preliminary Results* of the review of the antidumping duty order on wooden bedroom furniture (WBF) from the People's Republic of China (China) covering the period January 1, 2017, through December 31, 2017.[1] On January 10, 2019, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, the petitioners) filed a case brief.[2] No rebuttal briefs were filed.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] The revised deadline for the final results of review is now May 21, 2019.

Scope of the Order

The product covered by the *Order* is wooden bedroom furniture, subject to certain exceptions.[4] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.90.7005, 9403.90.7080, 9403.50.9041, 9403.60.8081, 9403.20.0018, 9403.90.8041, 7009.92.1000 or 7009.92.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[5]

Analysis

In the *Preliminary Results,* Commerce: (1) Determined that eight companies, including the sole mandatory respondent, Decca Furniture Ltd. (Decca), did not establish their eligibility for a separate rate and are part of the China-wide entity; [6] and (2) determined that five companies had no shipments of subject merchandise.[7] For these final results of review, we have continued to treat the eight companies, including Decca, as part of the China-wide entity and have continued to find that five companies had no shipments during the POR. Because no party requested a review of the China-wide entity, we are not conducting a review of the China-wide entity.[8] Thus, there is no change to the rate for the China-wide entity from the *Preliminary Results.* The existing rate for the China-wide entity is 216.01 percent.

For additional details, *see* the Issue and Decision Memorandum, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issue and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Issue and Decision Memorandum are identical in content. The issue raised by the petitioners in their case brief is identified in the Appendix to this notice.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Commerce will instruct CBP to liquidate any entries of subject merchandise exported during this POR by Decca and the other seven companies noted above which did not qualify for separate rate status, at the China-wide rate.

Additionally, pursuant to Commerce's practice in non-market economy cases, if there are any suspended entries of subject merchandise during the POR under the case numbers of the five companies that claimed no shipments of subject merchandise during the POR, they will be liquidated at the China-wide rate.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed China and non-China exporters which are not under review in this segment of the proceeding but which received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 216.01 percent; and (3) for all non-China exporters of subject merchandise which have not received

[1] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017,* 83 FR 63829 (December 12, 2018) (*Preliminary Results*).

[2] *See* Petitioners' Letter, ''Wooden Bedroom Furniture from the People's Republic of China: Petitioners' Case Brief,'' dated January 10, 2019 (Petitioners' Case Brief).

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[5] For a complete description of the scope of the *Order, see* Memorandum, ''Issue and Decision Memorandum for the Final Results of the 2017 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated concurrently with this notice (Issue and Decision Memorandum).

[6] The other seven companies are: (1) Dongguan Kingstone Furniture Co., Ltd.; Kingstone Furniture Co., Ltd.; (2) Kunshan Summit Furniture Co., Ltd.; (3) Qingdao Liangmu Co., Ltd.; (4) Restonic (Dongguan) Furniture Ltd.; Restonic Far East (Samoa) Ltd.; (5) Rizhao Sanmu Woodworking Co., Ltd.; (6) Techniwood Industries Ltd.; Ningbo Furniture Industries Ltd.; Ningbo Hengrun Furniture Co., Ltd.; and (7) Zhangjiagang Zheng Yan Decoration Co., Ltd. *See Preliminary Results* at 63829.

[7] The five companies/company groupings are: (1) Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.; (2) Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd., Shanghai Sunrise Furniture Co. Ltd., Fairmont Designs; (3) Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd.; (4) Shenyang Shining Dongxing Furniture Co., Ltd.; and (5) Yeh Brothers World Trade Inc. *See Preliminary Results* at 63829.

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[9] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice of the final results of this antidumping duty administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: May 21, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment: Commerce Should Assign the Mandatory Respondent Decca a Rate Based on Total Adverse Facts Available
V. Recommendation

[FR Doc. 2019–11081 Filed 5–28–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: On April 24, 2019, the Department of Commerce (Commerce) published in the **Federal Register** the final results of the administrative review of the antidumping duty (AD) order on certain steel nails from the People's Republic of China (China). Commerce is amending the final results of the administrative review to correct an unintentional ministerial error.

DATES: Applicable May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Benito Ballesteros, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone 202–482–4031 or 202–482–7425, respectively.

SUPPLEMENTARY INFORMATION: On April 24, 2019, Commerce published in the **Federal Register** the final results of the administrative review of certain steel nails from China.[1] No interested party submitted ministerial allegations concerning the *Final Results.* Following the publication of the *Final Results,* Commerce identified a ministerial error in Dezhou Hualude Hardware Products Co., Ltd.'s (Dezhou Hualude) final results margin calculation program.[2]

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending the final results of review . . . .'' Even when interested parties do not submit ministerial error comments, Commerce has the authority to self-correct ministerial errors provided the self-correction occurs within the statutory timeline for judicial review.[4]

Ministerial Errors

In the *Final Results,* we stated our intention to adjust U.S. price in the margin programming for Dezhou Hualude's international freight and marine insurance expenses.[5] However, following the *Final Results,* we observed that the SAS code input into the program inadvertently caused the program to create missing values for the international freight expenses pertaining to sales to certain importers, which in turn removed those sales from the program and failed to generate importer-specific liquidation rates for those importers. Modifying the final margin program to fix these missing values will properly include the sales in the program and generate the proper importer-specific liquidation rates. Accordingly, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that an unintentional ministerial error was made in the *Final Results.* For a detailed discussion of this ministerial error, as well as Commerce's analysis, *see* Ministerial Error Memorandum.

Amended Final Results

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of this administrative review of nails from China. For the amended final results, Commerce has recalculated the weighted-average margin for Dezhou Hualude. Commerce has also updated the sample rate assigned to the non-selected companies, which is based on an average of the rates of the three mandatory respondents, The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley), Dezhou Hualude, and Shandong Dinglong Import & Export Co., Ltd. (Shandong Dinglong), as discussed in the Ministerial Error Memorandum. The revised weighted-average dumping margins for the administrative review are as follows:

[1] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2016–2017,* 84 FR 17134 (April 24, 2019) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Memorandum, ''Administrative Review Certain Steel Nails from the People's Republic of China; 2016–2017: Ministerial Error Memorandum,'' dated concurrently with this notice (Ministerial Error Memorandum).

[3] *See also* 19 CFR 351.224(f).

[4] *See American Signature, Inc.* v. *United States,* 598 F.3d 816, 826–28 (Fed. Cir. 2010).

[5] *See Final Results* and accompany IDM at 26.

Exporter	Weighted-average margin (percent)
Dezhou Hualude Hardware Products Co., Ltd	69.99
Shandong Dinglong Import & Export Co., Ltd[6]	118.04
The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley)[7]	3.94
Hebei Canzhou New Century Foreign Trade Co., Ltd	43.26
Mingguang Ruifeng Hardware Products Co., Ltd	43.26
Qingdao D&L Group Ltd	43.26
SDC International Australia Pty. Ltd	43.26
Shandong Oriental Cherry Hardware Group Co., Ltd	43.26
Shanghai Curvet Hardware Products Co., Ltd	43.26
Shanghai Yueda Nails Industry Co., Ltd. a.k.a. Shanghai Yueda Nails Co., Ltd	43.26
Shanxi Hairui Trade Co., Ltd	43.26
Shanxi Pioneer Hardware Industrial Co., Ltd	43.26
Shanxi Tianli Industries Co., Ltd	43.26
S-Mart (Tianjin) Technology Development Co., Ltd	43.26
Suntec Industries Co., Ltd	43.26
Tianjin Huixinshangmao Co., Ltd	43.26
Tianjin Jinchi Metal Products Co., Ltd	43.26
Tianjin Jinghai County Hongli Industry & Business Co., Ltd	43.26
Tianjin Universal Machinery Imp. & Exp. Corporation	43.26
Tianjin Zhonglian Metals Ware Co., Ltd	43.26
Xi'an Metals & Minerals Import & Export Co., Ltd	43.26
Zhangjiagang Lianfeng Metals Products Co., Ltd	43.26

Disclosure

We intend to disclose the calculations performed for these amended final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce shall determine, and U.S. Customs Border Protection (CBP) shall assess antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b).

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[8] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[9] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[10] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[11] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the China-wide entity at the China-wide rate.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after April 24, 2019, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the ''Amended Final Results'' section (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 118.04 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporters that supplied that non-China exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[6] There are no changes to the dumping margin for Shandong Dinglong.

[7] There are no changes to the dumping margin for Stanley.

[8] *See* 19 CFR 351.212(b)(1).

[9] *Id.*

[10] *Id.*

[11] *See* 19 CFR 351.106(c)(2).

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: May 22, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–11126 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: International Trade Administration.

Title: Procedures for Importation of Supplies for Use in Emergency Relief Work.

Form Number(s): N/A.

OMB Control Number: 0625–0256.

Type of Request: Regular Submission.

Burden Hours: 15.

Number of Respondents: 1.

Average Hours per Response: 15.

Needs and Uses: The regulations (19 CFR 358.101–104) provide procedures for requesting the Secretary of Commerce to permit the importation of supplies, such as food, clothing, and medical, surgical, and other supplies, for use in emergency relief work free of antidumping and countervailing duties.

Affected Public: Business or other for-profit organizations.

Frequency: Varies.

Respondent's Obligation: Voluntary.

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

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

Sheleen Dumas,

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

[FR Doc. 2019–11115 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–868]

Welded Stainless Pressure Pipe From India: Rescission of the Countervailing Duty Administrative Review; 2017

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty order on welded stainless pressure pipe (WSPP) from India for the period January 1, 2017, through December 31, 2017.

DATES: Applicable May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0176 and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2018, Commerce published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on WSPP from India.[1] On February 6, 2019, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published a notice of initiation of an administrative review of the order covering the period January 1, 2017, through December 31, 2017.[2] On March 8, 2019, Commerce selected Hindustan Inox Limited (Hindustan Inox), and Sun Mark Stainless Pvt. Ltd. and its cross-owned affiliates, Sunrise Stainless Private Limited and Shah Foils Ltd. (collectively, Sun Mark), as the mandatory respondents in this administrative review.[3] On May 7, 2019, Hindustan Inox and Sun Mark withdrew their requests for review; Bristol Metals and Primus Pipe & Tube (the petitioners) also submitted a timely request to rescind the administrative review of the CVD order of WSPP from India with respect to all entities for which it had requested a review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party or parties who requested the review withdraw(s) the request within 90 days of the date of publication of the notice of initiation of the requested review. Hindustan Inox, Sun Mark, and the petitioners timely withdrew their requests for an administrative review, and no other party requested a review of these companies. Therefore, we are rescinding the administrative review of the CVD order on WSPP from India covering the period January 1, 2017, to December 31, 2017, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertains shall be assessed countervailing duties that are equal to the cash deposits of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 54912 (November 1, 2018).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[3] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order of Welded Stainless Pressure Pipes from India: Respondent Selection,'' dated March 8, 2019.

[4] *See* Hindustan's letter, ''Welded Stainless Pressure Pipe from India: Withdrawal of Request for Countervailing Duty Administrative Review of Hindustan Inox Limited.,'' dated May 7, 2019; Sun Mark's letter, ''Welded Stainless Pressure Pipes from India: Withdrawal of Request for Countervailing Duty Administrative Review,'' dated May 7, 2019; the petitioners' letter, ''Welded Stainless Pressure Pipe from India: Request to Rescind Administrative Review,'' dated May 7, 2019.

responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: May 22, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–11125 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet on Wednesday, June 5, 2019, from 9:00 a.m. to 3:30 p.m. Eastern Time. The purpose of this meeting is to discuss and review the role and responsibilities of the Judges Panel and information received from the National Institute of Standards and Technology (NIST) in order to ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. The agenda will include: Judges Panel roles and processes; Baldrige Program updates; new business/public comment; lessons learned from the 2018 judging process; and the 2019 Award process.

DATES: The Judges Panel will meet on Wednesday, June 5, 2019 from 9:00 a.m. until 3:30 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 101, Lecture Room A, 100 Bureau Drive, Gaithersburg, MD 20899. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 2899–1020, 301–975–2361. Mr. Fangmeyer's email address is *robert.fangmeyer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, June 5, 2019 from 9:00 a.m. to 3:30 p.m. Eastern Time. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The primary purpose of this meeting is to assemble to discuss and review the role and responsibilities of the Judges Panel and information received from NIST in order to ensure the integrity of the Malcolm Baldrige National Quality Award selection process. The agenda may change to accommodate Judges Panel business. The final agenda will be posted on the NIST website at *https://patapsco.nist.gov/BoardofExam/Examiners_Judge2.cfm.* The meeting is open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's/Board's business are invited to request a place on the agenda. Approximately 30 minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements to the Baldrige Performance Excellence Program, Attention: Robyn Verner, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, via fax at (301) 975–4967, or electronically by email to *robyn.verner@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your full name, time of arrival, email address, and phone number to Robyn Verner by 4:00 p.m. Eastern Time, Friday, May 31, 2019. Non-U.S. citizens must submit additional information; please contact Ms. Verner. Ms. Verner's email address is *robyn.verner@nist.gov* and her phone number is (301) 975–2361. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Verner at (301) 975–2361 or visit: *http://www.nist.gov/public_affairs/visitor/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–11091 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH040

Fisheries of the Atlantic; 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 65 Data Webinar II for HMS Atlantic blacktip shark.

SUMMARY: The SEDAR 65 assessment process of HMS Atlantic blacktip shark will consist of a Data Workshop, a series of data and assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 65 Data Webinar II will be held June 20, 2019, from 1 p.m. to 3 p.m. Eastern Standard 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 webinar are as follows:

Panelists will review the data sets being considered for the assessment and discuss initial modeling efforts.

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 workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–11148 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH048

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet June 19–25, 2019. The Pacific Council meeting will begin on Thursday, June 20, 2019 at 9 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. each day through Tuesday, June 25, 2019. All meetings are open to the public, except a closed session will be held from 8 a.m. to 9 a.m., Thursday, June 20 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the DoubleTree by Hilton Mission Valley, 7450 Hazard Center Drive, San Diego, CA; telephone: (619) 297–5466.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll-free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The June 19–25, 2019 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PST Thursday, June 20, 2019 and continue at 8 a.m. daily through Tuesday, June 25, 2019. Broadcasts end daily at 5 p.m. PDT or when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast. To access the meeting online, please use the following link: *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the June Webinar ID, 634–645–459, and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio-only portion of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1–562–247–8422 (not a toll-free number), audio access code 532–691–006, and entering the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance June 2019 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Monday, June 3, 2019.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period
1. Comments on Non-Agenda Items
C. Habitat
1. Current Habitat Issues
D. Administrative Matters
1. Council Coordination Committee Meeting Report
2. Update on Implementation of the Modernizing Recreational Fisheries Management Act of 2018
3. Legislative Matters
4. Allocation Review Procedures—Final Action
5. Phased-In Approaches to Changing Catch Limits—Scoping
6. Electronic Monitoring Program Procedural Directive
7. Fiscal Matters
8. Approval of Council Meeting Record
9. Membership Appointments and Council Operating Procedures
10. Future Council Meeting Agenda and Workload Planning
E. Enforcement
1. Annual U.S. Coast Guard Fishery Enforcement Report
F. Coastal Pelagic Species Management
1. National Marine Fisheries Report
2. Stock Assessment Prioritization Process
3. Pacific Mackerel Assessment, Harvest Specifications, and Management Measures—Final Action
4. Review of Management Categories
G. Salmon Management
1. Rebuilding Plans
2. Southern Resident Killer Whale Endangered Species Act Consultation Progress Report
H. Pacific Halibut Management
1. Commercial Directed Fishery Transition Process and Workshop Planning
I. Groundfish Management
1. National Marine Fisheries Service Report
2 Workload and New Management Measure Update
3. Trawl Logbook Requirement
4. Groundfish Endangered Species Workgroup Report
5. Endangered Species Act Seabird Mitigation Measures—Final Action
6. Biennial Harvest Specifications and Management Measures Process for 2021–22 Fisheries
7. Inseason Adjustments—Final Action
J. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. Recommend International Management Activities
3. Yellowfin Tuna Overfishing Response
4. Drift Gillnet Performance Metrics Review
5 Exempted Fishing Permits
6. Deep-Set Buoy Gear Authorization

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Monday June 3, 2019.

Schedule of Ancillary Meetings

Day 1—Wednesday, June 19, 2019

Coastal Pelagic Species Advisory Subpanel—8 a.m.
Coastal Pelagic Species Management Team—8 a.m.
Habitat Committee—8 a.m.
Scientific and Statistical Committee—8 a.m.
Legislative Committee—10 a.m.
Budget Committee—1 p.m.

Day 2—Thursday, June 20, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Coastal Pelagic Species Advisory Subpanel—8 a.m.
Coastal Pelagic Species Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Scientific and Statistical Committee—8 a.m.
Enforcement Consultants—3 p.m.

Day 3—Friday, June 21, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—Ad Hoc

Day 4—Saturday, June 22, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—Ad Hoc

Day 5—Sunday, June 23, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—Ad Hoc

Day 6—Monday, June 24, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—Ad Hoc

Day 7—Tuesday, June 25, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.

Although non-emergency issues not contained in this agenda may come before the Pacific Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed 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 Pacific Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: May 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–11150 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey Instrument Assessing Ecosystem-Based Resource Management in the United States Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 29, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kathleen Ernst (*kathleen.ernst@noaa.gov*) or Julien Lartigue (*julien.lartigue@noaa.gov*), NOAA RESTORE Science Program, NOAA/NCEI 1021 Balch Blvd., Suite 1003, Stennis Space Center, MS 39529, 240–429–5966.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA RESTORE Science Program is committed to improving ecosystem-based management practices throughout the Gulf of Mexico by funding project teams that bring together scientists and resource managers to produce findings and products that (1) increase knowledge and understanding of the ecosystem as a whole, and (2) inform ecosystem-based management. To assess progress towards these outcomes, the Science Program established a long-term outcome metric for the program: The management of the Gulf of Mexico ecosystem and its resources is informed by a comprehensive understanding of the dynamic linkages between the components of the ecosystem and there is growing confidence in, and capacity for, taking an ecosystem-based approach to management. A survey instrument has been developed that will assess the state of ecosystem based management practices across the Gulf of Mexico. This survey instrument will be electronically distributed to resource managers from not-for-profit institutions and local, state, tribal, and federal government agencies. Potential participants can print the survey, or receive the survey by mail if they so choose. Currently, no survey instrument assessing the state of ecosystem-based management practices in the Gulf of Mexico has been undertaken at the regional scale. This survey instrument is intended to create a baseline of understanding regarding ecosystem-based management practices and progress in the Gulf of Mexico region of the United States.

II. Method of Collection

Information will primarily be collected electronically using a survey instrument to record responses. The survey instrument will be available as a Google Form, and partial responses will be recorded if a participant submits the survey but does not complete all survey questions. An option to print the survey instrument and mail it to the NOAA RESTORE Science Program Offices is also available at this url: *https://docs.google.com/forms/d/e/1FAIpQLScp7IOm8ZAeSCtSGasyqM48xjx7jVQ_xGXttDR6XZuTfrXUGw/viewform.* In the event that a potential respondent requests that a survey be mailed to them, NOAA RESTORE Science Program staff will mail the survey to the potential respondent with a stamped return envelope addressed to the NOAA RESTORE Science Program.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Individual natural resource management professionals working for not-for-profit institutions; state, local, or tribal government, or the Federal government.

Estimated Number of Respondents: 100.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 5.5 hours.

Estimated Total Annual Cost to Public: $1,620.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

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

[FR Doc. 2019–11117 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Trawl Logbook Requirement.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular (New collection).

Number of Respondents: 21.

Average Hours per Response: 6 hours per logbook.

Burden Hours: 216 hours annually.

Needs and Uses: The success of fisheries management programs depends significantly on the availability of fishery data. Currently, the states of Washington, Oregon, and California administer a trawl logbook on behalf of the Pacific Fishery Management Council (Council) and NOAA's National Marine Fisheries Service (NMFS). The log used is a standard format developed by the Council to collect information necessary to effectively manage the fishery on a coast-wide basis. The trawl logbook collects haul-level effort data including tow time, tow location, depth of catch, net type, target strategy, and estimated

pounds of fish retained per tow. Each trawl log represents a single fishing trip.

The state of California repealed their requirement, effective July 1, 2019, therefore, NMFS must create a federal requirement in order to not lose logbook coverage from trawl vessels in California. This federal requirement duplicates the logbook structure and process that the state of California was using in order to minimize disruption or confusion for fishery participants. Under this rule, NMFS will contract with the Pacific States Marine Fisheries Commission (PSMFC) to distribute and collect the same logbook these fishermen have been using previously. These data are used regularly by NMFS, the Pacific Fishery Management Council, the West Coast Groundfish Observer Program, NMFS Office of Law Enforcement, and the Coast Guard for fisheries management and enforcement.

Affected Public: Business and other for-profit.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

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

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

Sheleen Dumas,

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

[FR Doc. 2019–11116 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation for Applications for Advisory Councils Established Pursuant to the National Marine Sanctuaries Act and Executive Orders

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of solicitation.

SUMMARY: Notice is hereby given that ONMS will solicit applications to fill seats on its 13 national marine sanctuary advisory councils and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils), under the National Marine Sanctuaries Act and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Executive Order, respectively. Vacant seats, including positions (*i.e.,* primary and alternate), for each of the advisory councils will be advertised differently at each site in accordance with the information provided in this notice. This notice contains web page links and contact information for each site, as well as additional resources on advisory council vacancies and the application process.

DATES: Please visit individual site web pages, or reach out to a site as identified in this notice's **SUPPLEMENTARY INFORMATION** section on Contact Information for Each Site, regarding the timing and advertisement of vacant seats, including positions (*i.e.,* primary or alternate), for each of the advisory councils. Applications will only be accepted in response to current, open vacancies and in accordance with the deadlines and instructions included on each site's website.

ADDRESSES: Vacancies and applications are specific to each site's advisory council. As such, questions about a specific council or vacancy, including questions about advisory council applications, should be directed to a site. Contact Information for Each Site is contained in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For further information on a particular advisory council or available seats, please contact the site as identified in this notice's **SUPPLEMENTARY INFORMATION** section on Contact Information for Each Site, below. For general inquiries related to this notice or ONMS advisory councils established pursuant to the National Marine Sanctuaries Act or Executive Order 13178, contact Rebecca R. Holyoke, Ph.D., Office of National Marine Sanctuaries Deputy Director (*Rebecca.Holyoke@noaa.gov;* 240–533–0685).

SUPPLEMENTARY INFORMATION: Section 315 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1445A) allows the Secretary of Commerce to establish advisory councils to advise and make recommendations regarding the designation and management of national marine sanctuaries. Executive Order 13178 similarly established a Coral Reef Ecosystem Reserve Council pursuant to the NMSA for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. In this Supplementary Information section, NOAA provides details regarding the Office of National Marine Sanctuaries, the role of advisory councils, and contact information for each site.

Office of National Marine Sanctuaries (ONMS)

ONMS serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 13 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. Advisory councils are community-based advisory groups established to provide advice and recommendations to ONMS on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the site. Pursuant to Section 315(a), advisory councils are exempt from the requirements of the Federal Advisory Committee Act. Additional information on ONMS and its advisory councils can be found at *http://sanctuaries.noaa.gov.*

Advisory Council Membership

Under Section 315 of the NMSA, advisory council members may be appointed from among: (1) Persons employed by federal or state agencies with expertise in management of natural resources; (2) members of relevant regional fishery management councils; and (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources. For the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Executive Order 13178 Section 5(f) specifically identifies member and representative categories.

The charter for each advisory council defines the number and type of seats and positions on the council; however, as a general matter, available seats could include: Conservation, education,

research, fishing, whale watching, diving and other recreational activities, boating and shipping, tourism, harbors and ports, maritime business, agriculture, maritime heritage, and citizen-at-large.

For each of the 14 advisory councils, applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lakes resources; and possibly the length of residence in the area affected by the site. Applicants chosen as members or alternates should expect to serve two- or three-year terms, pursuant to the charter of the specific national marine sanctuary advisory council or Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council.

More information on advisory council membership and processes, and materials related to the purpose, policies, and operational requirements for advisory councils can be found in the charter for a particular advisory council (*http://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the *National Marine Sanctuary Advisory Council Implementation Handbook* (*http://sanctuaries.noaa.gov/management/ac/acref.html*).

Contact Information for Each Site

- Channel Islands National Marine Sanctuary Advisory Council: Channel Islands National Marine Sanctuary, University of California, Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106; 805–893–6437; *http://channelislands.noaa.gov/sac/councilnews.html.*
- Cordell Bank National Marine Sanctuary Advisory Council: Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950; 415–464–5260; *http://cordellbank.noaa.gov/council/applicants.html.*
- Florida Keys National Marine Sanctuary Advisory Council: Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040; 305–809–4700; *http://floridakeys.noaa.gov/sac/apps.html.*
- Flower Garden Banks National Marine Sanctuary Advisory Council: Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551; 409–621–5151; *http://flowergarden.noaa.gov/advisorycouncil/recruitment.html.*
- Gray's Reef National Marine Sanctuary Advisory Council: Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2345; *http://graysreef.noaa.gov/management/sac/council_news.html.*
- Greater Farallones National Marine Sanctuary Advisory Council: Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129; 415–561–6622; *http://farallones.noaa.gov/manage/sacrecruitment.html.*
- Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA Inouye Regional Center, NOS/ONMS/HIHWNMS, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–879–2818; *http://hawaiihumpbackwhale.noaa.gov/council/councilappaccepting.html.*
- *Monitor* National Marine Sanctuary Advisory Council: *Monitor* National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; 757–599–3122; *http://monitor.noaa.gov/advisory/news.html.*
- Monterey Bay National Marine Sanctuary Advisory Council: Monterey Bay National Marine Sanctuary, 99 Pacific Street, Building 455A, Monterey, CA 93940; 831–647–4201; *http://montereybay.noaa.gov/sac/recruit.html.*
- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: NOAA Inouye Regional Center, NOS/ONMS/PMNM, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–725–5800; *http://www.papahanaumokuakea.gov/new-about/council/apply/.*
- Olympic Coast National Marine Sanctuary Advisory Council: Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362; 360–457–6622; *http://olympiccoast.noaa.gov/involved/sac/recruitment.html.*
- Stellwagen Bank National Marine Sanctuary Advisory Council: Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; 781–545–8026; *http://stellwagen.noaa.gov/management/sac/recruitment.html.*
- Thunder Bay National Marine Sanctuary Advisory Council: Thunder Bay National Marine Sanctuary, 500 West Fletcher Street, Alpena, MI 49707; 989–356–8805; *http://thunderbay.noaa.gov/management/advisory_council_recruitment.html.*

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 21, 2019.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–11080 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH047

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and a partially closed meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 132nd Scientific and Statistical Committee (SSC) meeting, Fishery Data Collection and Research Committee (FDCRC), 178th Council meeting and associated meetings to take actions on fishery management issues in the Western Pacific Region. A portion of the Council's Executive, Budget and Legislative Standing Committee meeting will be closed to the public for a briefing on litigation by counsel.

DATES: The meetings will be held between June 18 and June 27, 2019. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 132nd SSC, FDCRC, the Council's Executive, Budget and Legislative Standing Committee and Pelagic and International Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The 178th Council meeting will be held at the Laniakea YWCA, Fuller Hall, 1040 Richards Street, Honolulu HI 96813, phone: (808) 538–7061. The Fishers Forum will be held at the Ala Moana Hotel, 410 Atkinson Dr, Honolulu, HI 96814, phone: (808) 955–4811.

FOR FURTHER INFORMATION: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The 132nd SSC meeting will be held between 8:30 a.m. and 5 p.m. on June 18–20, 2019. The FDCRC meeting will be held between 8:30 a.m. and 12 noon on June 24, 2019. The Executive, Budget and

Legislative Standing Committee meeting will be held on June 24, 2019, between 9 a.m. and 11 a.m. The portion of the Executive, Budget and Legislative Standing Committee meeting from 9:30 a.m. to 10 a.m. will be closed to the public in accordance with Section 302(i)(3)(A)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for a briefing on litigation by counsel. The Pelagic and International Standing Committee will be held on June 24, 2019, between 1 p.m. and 3 p.m. The 178th Council meeting will be held between 8:30 a.m. and 5 p.m. on June 25–27, 2019. On June 25, 2019, the Council will host a Fishers Forum between 6 p.m. and 9 p.m.

Agenda items noted as ''Final Action Items'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 132nd SSC Meeting

Tuesday, June 18, 2019, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 131st SSC Meeting Recommendations
4. Report from Pacific Islands Fisheries Science Center Director
   - A. Status of Council Research Priorities for the FY 2019 Annual Guidance Memo
5. Program Planning and Research
   - A. Shifting Distributions and Changing Productivity
   - B. Best Scientific Information Available Policy Directive
   - C. SSC Workgroup Report
     1. Modern Fish Act Process Paper
     2. Road Map for Effective Spatial Management
   - D. 2018 Annual Stock Assessment and Fishery Evaluation Report and Recommendations
     1. Archipelagic Report Overview and Highlights
     2. Pelagic Report Overview and Highlights
   - E. Public Comment
   - F. SSC Discussion and Recommendations
6. Island Fisheries
   - A. Setting the Acceptable Biological Catch (ABC) for the Main Hawaiian Islands (MHI) Kona Crab
     1. Risk of Overfishing (P*) Working Group Report
     2. Setting the ABC for the MHI Kona Crabs (Action Item)
     3. Social Ecological Economic Management Uncertainty (SEEM*) Working Group Report
   - B. Status of Opening MHI Bottomfish Restricted Fishing Areas and Revisions to Reporting Requirements
   - C. Public Comment
   - D. SSC Discussion and Recommendations
7. Protected Species
   - A. Oceanic Whitetip Shark Recovery Planning Meeting
   - B. Evaluation of Potential Impacts of Blue-Dyed Bait on Target Species Catch Rates
   - C. Developing Tori Lines Minimum Standards for the Hawaii Longline Fishery
   - D. Status of Endangered Species Act (ESA) Consultations for the Hawaii Deep-Set Longline, American Samoa Longline, and Bottomfish Fisheries
   - E. Updates on ESA and Marine Mammal Protection Act (MMPA) Actions
   - F. Public Comment
   - G. SSC Discussion and Recommendations

Wednesday, June 19, 2019, 8:30 a.m. to 5 p.m.

8. SSC Working Group Session
   - A. Potential Spatial Management Approaches from the Hawaii Shallow-Set Longline Biological Opinion
   - B. Pacific Insular Fisheries—Monitoring and Assessment Planning Summit
9. Pelagic Fisheries
   - A. American Samoa Longline Fishery Report
   - B. Hawaii Longline Report Fishery Report
   - C. Territorial Bigeye Tuna Catch and/or Allocation Limits (Action Item)
   - D. Pacific Community (SPC) Tuna Tissue Bank
   - E. Pelagic Fisheries Research Plan Updates
     1. Update on Ancillary Pelagic Indicators
     2. Analysis on Oceanic Whitetip Shark Catch Per Unit Effort (CPUE)
   - F. Hawaii Longline Fisheries
     1. Shallow-Set Longline Biological Opinion
     2. Consideration of Additional Mitigation Measures Under the Shallow-Set Longline Biological Opinion Reasonable and Prudent Measures
     3. Update on Electronic Reporting in the Hawaii Longline Fisheries
   - G. International Fisheries Meetings
     1. 2019 Inter-American Tropical Tuna Commission (IATTC) Scientific Advisory Committee (SAC) Meeting
     2. Outcomes of United Nations Boundaries Beyond National Jurisdiction (UN–BBNJ) Meeting
   - H. Public Comment
   - I. SSC Discussion and Recommendations

Thursday, June 20, 2019, 8:30 a.m. to 5 p.m.

10. Other Business
    - A. 133rd SSC Meetings Dates
11. Summary of SSC Recommendations to the Council

Agenda for the FDCRC Meeting

Monday, June 24, 2019, 8:30 a.m. to 12 noon

1. Welcome Remarks and Introductions
2. Update on Previous FDCRC Recommendations
3. Regulations for Mandatory License and Reporting
   - A. Guam
   - B. Commonwealth of Northern Mariana Islands (CNMI)
4. Data Collection Improvement Updates
   - A. American Samoa Department of Marine and Wildlife Resources (DMWR)
   - B. Guam Division of Aquatic and Wildlife Resources (DAWR)
   - C. CNMI Department of Land and Natural Resources (DLNR)—Division of Fish and Wildlife (DFW)
   - D. Hawaii DLNR—Division of Aquatic Resources (DAR)
   - E. Guam Bureau of Statistics and Plans (BSP)
   - F. Western Pacific Regional Fishery Management Council
   - G. National Marine Fisheries Service (NMFS)—Pacific Island Fisheries Science Center (PIFSC)
5. Pacific Insular Fisheries—Monitoring and Assessment Planning Summit (PIF–MAPS)
6. Interview of FDCRC members for the PIF–MAPS
7. FDCRC Strategic Plan and Marine Recreational Information Program

(MRIP) Regional Implementation Plan Updates
8. Report on FDCRC-Technical Committee
9. Public Comment
10. Discussions and Recommendations

Agenda for the Executive, Budget and Legislative Standing Committee

Monday, June 24, 2019, 9 a.m. to 11 a.m.

1. Financial Reports
2. Administrative Reports
3. CLOSED SESSION (MSA § 302(i)(3)(A)(ii))—Status of Litigation (9:30 a.m.–10 a.m.)
4. Council Standard Operating Policies and Procedures (SOPP)
5. Report on May Council Coordination Committee Meeting
6. Council Family Changes
7. Council staff coordination workshop with NMFS
8. Sustainable Fisheries Fund Marine Conservation Fund
9. Meetings and Workshops
10. Other Issues
11. Public Comment
12. Discussion and Recommendations

Agenda for the Pelagic and International Standing Committee

Monday, June 24, 2019, 1 p.m. to 3 p.m.

1. Hawaii Shallow-Set Longline Fishery
   A. Biological Opinion
   B. Managing Loggerhead and Leatherback Sea Turtle Interactions in the Hawaii-based Shallow-Set Longline Fishery (Final Action)
   C. Consideration of Additional Mitigation Measures under the Biological Opinion Reasonable and Prudent Measures
2. Update on Electronic Reporting in Hawaii Longline Fisheries
3. US Territory Longline Bigeye Catch/Allocation Limits (Initial Action)
4. International Fisheries
   A. 2019 IATTC–SAC Meeting
   B. Outcomes of UN–BBNJ Meeting
5. Advisory Group Report and Recommendations
   A. Advisory Panel
   B. Scientific & Statistical Committee
6. Public Comment
7. Standing Committee Recommendations

Agenda for 178th Council Meeting

Tuesday, June 25, 2019, 8:30 a.m. to 5 p.m.

1. Welcome and Introductions
2. Approval of the 178th Agenda
3. Approval of the 176th and 177th Meeting Minutes
4. Executive Director's Report
5. Agency Reports
   A. National Marine Fisheries Service
   1. Pacific Islands Regional Office
   2. Pacific Islands Fisheries Science Center
   B. NOAA Office of General Counsel, Pacific Islands Section
   C. U.S. State Department
   D. U.S. Fish and Wildlife Service
   E. Enforcement
   1. U.S. Coast Guard
   a. Search and Rescue Presentation
   2. NOAA Office of Law Enforcement
   3. NOAA Office of General Counsel, Enforcement Section
   F. Public Comment
   G. Council Discussion and Action
6. Hawaii Archipelago & Pacific Remote Island Area
   A. Moku Pepa
   B. Legislative Report
   C. Enforcement Issues
   D. Main Hawaiian Islands Kona Crab Annual Catch Limits (ACL)
   1. P* Working Group Report
   2. SEEM* Working Group Report
   3. Options for Specifying ACLs for the Main Hawaiian Islands Kona Crab (Final Action)
   E. Report on MHI Bottomfish Restricted Fishing Areas
   F. Education and Outreach Initiatives
   G. Fishery Ecosystem Plan (FEP) Amendment to Precious Coral Essential Fish Habitat (EFH) (Final Action)
   H. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. Archipelagic Plan Team
   3. Scientific & Statistical Committee
   I. Public Comment
   J. Council Discussion and Action
7. Protected Species
   A. French Frigate Shoals Green Turtle Research Plans
   B. Oceanic Whitetip Shark Recovery Planning Meeting
   C. Developing Tori Line Minimum Standards for the Hawaii Longline Fishery
   D. Status of ESA Consultations for the Hawaii Deep-Set Longline, American Samoa Longline, and Bottomfish Fisheries
   E. Updates on ESA and MMPA Actions
   F. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. Protected Species Advisory Committee
   3. Pelagic Plan Team
   4. Scientific & Statistical Committee
   G. Public Comment
   H. Council Discussion and Action

Tuesday, June 25, 2019, 4 p.m.

8. Public Comment on Non-agenda Items

Tuesday, June 25, 2019, 6 p.m.–9 p.m.

Fishers Forum—Fishing in the Future: Emerging Technologies in Fisheries

Wednesday, June 26, 2019, 8:30 a.m.–5 p.m.

9. Program Planning and Research
   A. National Legislative Report
   B. Best Scientific Information Available Policy Directive
   C. SSC Working Group Reports
   1. Next Steps for Addressing Blue Ocean Marine Protected Areas (MPA)
   2. Process for Addressing the Modern Fish Act
   D. Summary of 2018 Annual SAFE Report Updates
   1. Archipelagic Annual SAFE Report
   2. Pelagic Annual SAFE Report
   E. Regional, National, & International Outreach & Education
   F. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. Archipelagic Plan Team
   3. Pelagic Plan Team
   4. Protected Species Advisory Committee
   5. Social Science Planning Committee
   6. Fishery Data Collection and Research Committee
   7. Scientific & Statistical Committee
   G. Public Comment
   H. Council Discussion and Action
10. Pelagic & International Fisheries
   A. American Samoa Longline Annual Fishery Report
   B. Hawaii Longline Annual Fishery Report
   C. Hawaii Shallow-Set Longline Fishery
   1. Biological Opinion
   2. Managing Loggerhead and Leatherback Sea Turtle Interactions in the Hawaii-Based Shallow-Set Longline Fishery (Final Action)
   3. Consideration of Additional Mitigation Measures Under the BiOp Reasonable and Prudent Measures
   D. Update on Electronic Reporting in the Hawaii Longline Fishery
   E. U.S. Territory Longline Bigeye Catch/Allocation Limits (Final Action)
   F. Overview of the Global Fishing Watch
   G. International Fisheries
   1. IATTC
   a. Report on IATTC 2019 Stock Assessments
   b. IATTC SAC Meeting 2019
   2. Outcomes of UN BBNJ Meeting
   3. Report on 33rd Biannual Meeting of the Committee on Fisheries
   H. Advisory Group Report and Recommendations

1. Advisory Panel
2. Protected Species Advisory Committee
3. Pelagic Plan Team Meeting
4. Scientific & Statistical Committee
I. Standing Committee Report and Recommendations
J. Public Comment
K. Council Discussion and Action
11. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Community Activities and Issues
1. Tuna Industry
2. Aunu'u Alia Development Project
3. Island Fisheries Inc. Fagatogo Fish Market
4. U.S. Coast Guard Awareness Training for American Samoa Longline Crews
5. 20th Steinlager I'a Lapo'a Game Fishing Tournament
6. American Samoa Government Development Projects
E. Education and Outreach Initiatives
1. U.S. Pacific Territories Capacity-Building Scholarship Program
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
G. Public Comment
H. Council Discussion and Action

Thursday, June 27, 2019, 8:30 a.m. to 5 p.m.

12. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
5. Education and Outreach Initiatives
B. CNMI
1. Arongol Falú
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
5. Education and Outreach Initiatives
C. Advisory Group Reports and Recommendations
1. Mariana Archipelago FEP Advisory Panel
2. Scientific & Statistical Committee
D. Public Comment
E. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Council SOPP
D. Report of the May Council Coordination Committee Meeting
E. Council Family Changes
1. Advisory Panel
2. FDCRC-Technical Committee
F. Meetings and Workshops
G. Standing Committee Report and Recommendations
H. Public Comment
I. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 178th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–11149 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Survey To Develop Estimates of Marine-Related Economic Activity in the United States; Withdrawal of Notice for Proposed Information Collection; Comment Request

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; withdrawal.

SUMMARY: This notice withdraws the Department of Commerce's May 22, 2019, notice for the Survey to Develop Estimates of Marine-Related Economic Activity in the United States. The Department of Commerce is withdrawing this notice requesting comments published in the May 22, 2019 issue of the **Federal Register** entitled ''Survey to Develop Estimates of Marine-Related Economic Activity in the United States''.

DATES: Applicable May 23, 2019, the document published at 84 FR 23525 on May 22, 2019, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jennifer Jessup, Director of Policy and Governance, PRA Clearance Officer, Office of Policy, and Governance, Office of the Chief Information Officer, Office of the Secretary, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

SUPPLEMENTARY INFORMATION: The Department of Commerce wishes to inform the public it is withdrawing a 60-day public notice in the **Federal Register** entitled, ''Survey to Develop Estimates of Marine-Related Economic Activity in the United States'' (84 FR 23525) published on May 22, 2019. This notice was published in error and is being withdrawn immediately for public comment.

Sheleen Dumas,

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

[FR Doc. 2019–11187 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH039

Fisheries of the Gulf of Mexico and South Atlantic; 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 68 Stock ID scoping webinar for Gulf of Mexico and Atlantic scamp.

SUMMARY: The SEDAR 68 assessment of Gulf of Mexico and Atlantic scamp will consist of a Data workshop, a series of assessment webinars, and a Review workshop.

DATES: The SEDAR 68 Stock Identification (ID) scoping webinar will be held on Wednesday, June 19, 2019, from 10 a.m. to 12 p.m., Eastern Standard 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) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment 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 assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a 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 in the Stock ID webinars are as follows:

1. Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on scamp stock structure.

2. Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

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 workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–11147 Filed 5–28–19; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0029]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Equal Credit Opportunity Act (Regulation B) 12 CFR 1002.''

DATES: Written comments are encouraged and must be received on or before June 28, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (*this link becomes active on the day following publication of this notice*). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Equal Credit Opportunity Act (Regulation B) 12 CFR 1002.

OMB Control Number: 3170–0013.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 472,000.

Estimated Total Annual Burden Hours: 1,220,992.

Abstract: The Equal Credit Opportunity Act (''ECOA'') was enacted to ensure that credit is made available to all creditworthy applicants without discrimination on the basis of sex, marital status, race, color, religion, national origin, age, or other prohibited bases under the ECOA. The ECOA allows for creditors to collect information for self-testing against these criteria, while not allowing creditors to use this information in making credit decisions of applicants. For certain mortgage applications, the ECOA requires creditors to ask for some of the prohibited information for monitoring purposes. In addition, for certain mortgage applications, creditors are required to send a copy of any appraisal

or written valuation used in the application process to the applicant in a timely fashion.

The ECOA also prescribes that creditors inform applicants of decisions made on credit applications. In particular, where creditors make adverse actions on credit applications or existing accounts, creditors must inform consumers as to why the adverse action was taken, such that credit applicants can challenge errors or learn how to become more creditworthy. Creditors must retain all application information for 25 months, including notices they sent and any information related to adverse actions.

Finally, the ECOA requires creditors who furnish applicant information to a consumer reporting agency to reflect participation of the applicant's spouse, if the spouse if permitted to use or contractually liable on the account.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on March 20, 2019, 84 FR 10301, Docket Number: CFPB–2019–0012. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: May 23, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–11186 Filed 5–28–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0028]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Report of Terms of Credit Card Plan.''

DATES: Written comments are encouraged and must be received on or before June 28, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov (this link becomes active on the day following publication of this notice).* Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Report of Terms of Credit Card Plan.

OMB Control Number: 3170–0001.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 175.

Estimated Total Annual Burden Hours: 63.

Abstract: Form FR 2572 collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards. The data enable the Bureau of Consumer Financial Protection to present information to the public on terms of credit card plans. The Bureau has introduced an online channel for submission that has driven down burden costs for participating institutions.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on March 20, 2019, 84 FR 10301, Docket Number: CFPB–2019–0013. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: May 23, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–11185 Filed 5–28–19; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for the AmeriCorps National Civlian Community Corps (NCCC) Project Sponsor Application; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled the AmeriCorps National Civilian Community Corps (NCCC) Service Project Application for review and approval in accordance with the Paperwork Reduction Act.

DATES: Comments may be submitted, identified by the title of the information collection activity, by June 28, 2019.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Jacob Sgambati, at 202–606–6839 or by email to *jsgambati@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may use our web chat for alternative communication: *www.NationalService.gov/contact-us.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on March 18, 2019 at 84 FR 9767. This comment period ended May 17, 2019. No public comments were received from this Notice.

Title of Collection: AmeriCorps NCCC Service Project Application.

OMB Control Number: 3045–0010.

Type of Review: Renewal.

Respondents/Affected Public: Current/prospective AmeriCorps NCCC Project Sponsors.

Total Estimated Number of Annual Responses: 1,800.

Total Estimated Number of Annual Burden Hours: 17,100 hours.

Abstract: The AmeriCorps NCCC Service Project Application is completed by organizations interested in sponsoring an AmeriCorps NCCC team. Each year, AmeriCorps NCCC engages teams of members in projects in communities across the United States. Service projects, which typically last from six to eight weeks, address critical needs in natural and other disasters, infrastructure improvement, environmental stewardship and conservation, energy conservation, and urban and rural development. Members construct and rehabilitate low-income housing, respond to natural disasters, clean up streams, help communities develop emergency plans, and address other local needs. CNCS seeks to renew the current information collection. The revisions are intended to improve the ability to assess prospective AmeriCorps NCCC sponsors. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on July 31, 2019.

Dated: May 21, 2019.

Jacob Sgambati,

Acting Deputy Director.

[FR Doc. 2019–11120 Filed 5–28–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Exclusive Software License

AGENCY: Air Force Research Laboratory Information Directorate, Rome, New York, Department of the Air Force, DoD.

ACTION: Notice of intent to issue an exclusive software license.

SUMMARY: Pursuant to the Code of Federal Regulations, which implements Public Law, the Department of the Air Force announces its intention to grant On The Curb, Inc., a New York corporation, having a place of business at 326 Broad Street, Utica, New York 13501, an exclusive license under the authority of Section 801 of Public Law 113–66 (2014 National Defense Authorization Act) limited to the field of use in Finance, Hospitality, and Consumer Products, to any right, title and interest the United States Air Force has in: Data Sculptor Version 1 and Data Sculptor Version 2 Source Code and Software Documentation (collectively ''Licensed Software'').

FOR FURTHER INFORMATION CONTACT: An exclusive license in the aforesaid field of use for this software will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objections should be sent to: Stephen Colenzo, Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Email: *stephen.colenzo@us.af.mil;* Telephone: (315) 330–2087; Facsimile (315) 330–7583.

Carlinda N. Lotson,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–11112 Filed 5–28–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2019–0005; OMB Control Number 0704–0216]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Bonds and Insurance; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 28, 2019.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Needs and Uses: DoD uses the information obtained through this collection to determine (1) the allowability of a contractor's costs of providing war-hazard benefits to its employees; (2) the need for an investigation regarding an accident that occurs in connection with a contract; and (3) whether a non-Spanish contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Type of Request: Revision and extension.

Number of Respondents: 274.

Responses per Respondent: 1.

Annual Responses: 274.

Average Burden per Response: Approximately 2 hours.

Annual Burden Hours: 548.

Reporting Frequency: On Occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James.

Written requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019–11033 Filed 5–28–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2019–0010; OMB Control Number 0704–0250]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; DFARS Part 242, Contract Administration and Related Clause in DFARS 252; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 28, 2019.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the Defense Federal Acquisition Regulation Supplement (DFARS) Part 242; Contract Administration and related clause in DFARS 252; OMB Control Number 0704–0250.

Needs and Uses: The Government requires this information in order to perform its contract administration functions. The information required by DFARS clause 252.242–7004, Material Management and Accounting System, is used by contracting officers to determine if contractor material management and accounting systems conform to established DoD standards.

Affected Public: Businesses or other for-profit and not-for- profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Type of Request: Revision.

Number of Respondents: 261.

Responses per Respondent: 1.

Annual Responses: 261.

Average Burden per Response: 475 hours.

Annual Burden Hours: 123,975.

Reporting Frequency: On Occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James.

Written requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019–11028 Filed 5–28–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

DATES: The open session of the meeting will be held on September 16, 2019, from 9:00 a.m. to 11:15 a.m. The executive session held from 11:15 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the Library of Congress in Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Lawrence Heyworth IV, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:15 a.m. to 12:00 p.m. on September 16, 2019, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or

conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:15 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b.

Dated: May 23, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–11122 Filed 5–28–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0034]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Teacher and Principal Survey of 2020–2021 (NTPS 2020–21) Preliminary Field Activities

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 28, 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–0034. 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: National Teacher and Principal Survey of 2020–2021 (NTPS 2020–21) Preliminary Field Activities.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,525.

Total Estimated Number of Annual Burden Hours: 3,322.

Abstract: The National Teacher and Principal Survey (NTPS), conducted biennially by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. The next administration of NTPS was originally planned for 2019–20 and the NTPS 2019–20 preliminary activities were approved in October 2018 with a change request approved in February 2019 (OMB# 1850–0598 v.24–25). However, due to staffing shortages at NCES, NCES had to delay the NTPS 2019–20 administration by one year, to the 2020–21 school year. No changes are planned to the materials and procedures approved for NTPS preliminary activities (OMB# 1850–0598 v.24–25), besides delaying all activities by one year. This request provides the dates, procedures, and materials for NTPS 2020–21 preliminary activities. After NTPS 2020–21, NCES plans to administer the next NTPS three years later, during the 2023–24 school year. Following the 2023–24 administration, NTPS is expected to be conducted every 2 years if resources allow.

Dated: May 23, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–11118 Filed 5–28–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During April 2019

	FE Docket Nos.
COMANCHE TRAIL PIPELINE, LLC.	19–36–NG
DRIFTWOOD LNG LLC	16–144–LNG
BLUE ROADS SOLUTIONS, LLC.	19–37–LNG
MARITIMES & NORTHEAST PIPELINE, L.L.C.	19–38–NG
EXCELERATE ENERGY GAS MARKETING, LIMITED PARTNERSHIP.	19–39–NG
EL PASO MARKETING COMPANY, L.L.C.	19–40–NG
OMIMEX CANADA, LTD	19–48–NG
FERUS NATURAL GAS FUELS INC.	19–41–LNG
SOLENSA S.A. DE C.V	19–42–LNG
DOMINION ENERGY FUEL SERVICES, INC.	19–49–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and a procedural order. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 23, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4368	04/09/19	19–36–NG	Comanche Trail Pipeline, LLC	Order 4368 granting blanket authority to import/export natural gas from/to Mexico.
PO	04/10/19	16–144–LNG	Driftwood LNG LLC	Procedural Order Dismissing Industrial Energy Consumers of America's Motion to Intervene and Protest and accepting late-filed comments.
4369	04/16/19	19–37–LNG	Blue Roads Solutions, LLC	Order 4369 granting blanket authority to import/export LNG from/to Canada/Mexico by truck.
4370	04/16/19	19–38–NG	Maritimes & Northeast Pipeline, L.L.C	Order 4370 granting blanket authority to import/export natural gas from/to Canada.
4371	04/16/19	19–39–NG	Excelerate Energy Gas Marketing, Limited Partnership.	Order 4371 granting blanket authority to import LNG from various international sources by vessel.
4375	04/17/19	19–40–NG	El Paso Marketing Company, L.L.C	Order 4375 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4376	04/22/19	19–48–NG	Omimex Canada, Ltd	Order 4376 granting blanket authority to import/export natural gas from/to Canada.
4377	04/28/19	19–41–LNG	Ferus Natural Gas Fuels Inc	Order 4377 granting blanket authority to import/export LNG from/to Canada by truck.
4378	04/28/19	19–42–LNG	Solensa S.A. de C.V	Order 4378 granting blanket authority to export LNG to Mexico by truck.
4379	04/28/19	19–49–NG	Dominion Energy Fuel Services, Inc	Order 4379 granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2019–11158 Filed 5–28–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision; Boardman-to-Ione 69-kV Transmission Line

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Record of decision (ROD).

SUMMARY: The Bonneville Power Administration has decided to implement a portion of the Agency Preferred Alternative from the *Final Environmental Impact Statement and Proposed Land Use Plan Amendments for the Boardman to Hemingway Transmission Line Project* (DOI–BLM–ORWA–V000–2012–0016–EIS, OROR–065375, IDI–036029 and DOE/EIS–0507, November 2016) (B2H Project Final EIS). More specifically, Bonneville has decided to enter into an amended land use agreement with the U.S. Navy (Navy) concerning Bonneville's existing 69-kilovolt (kV) Boardman-to-Ione transmission line. This amended land use agreement authorizes Bonneville's ongoing access to certain land on the Navy's Naval Weapon Systems Training Facility Boardman (NWSTF Boardman) in Morrow County, Oregon for approximately 14 miles of the Boardman-to-Ione transmission line, while also including terms to trigger the phased removal of this line off of NWSTF Boardman if the B2H Project is constructed.

Idaho Power Company (IPC) has proposed to construct the approximately 290-mile-long B2H Project, a portion of which would occupy the Boardman-to-Ione transmission line right-of-way. The environmental effects of removing the Boardman-to-Ione transmission line from NWSTF Boardman were analyzed in the B2H Project Final EIS, and removal of this line was identified as part of the Agency Preferred Alternative in the Final EIS. The U.S. Bureau of Land Management (BLM) was the lead federal agency under the National Environmental Policy Act (NEPA) for preparation of the B2H Project Final EIS. Bonneville and nineteen other public entities were involved in the EIS as cooperating agencies under NEPA. Bonneville hereby adopts the relevant portions of the Final EIS to support its decision to amend the Boardman-to-Ione transmission line land use agreement.

Several other federal agencies—including the BLM, the U.S. Forest Service, and the U.S. Bureau of Reclamation—have issued approvals to

IPC for portions of the B2H Project under their jurisdiction. These approvals have been for a B2H Project route alignment that follows the Agency Preferred Alternative in the Final EIS. Bonneville's decision to amend the existing Boardman-to-Ione land use agreement to allow for removal of the line for the B2H Project is consistent with these approvals.

ADDRESSES: This ROD will be available to all interested parties and affected persons and agencies. Copies of this ROD can be obtained from Bonneville's Public Information Center, P.O. Box 3621, Portland, Oregon, 97208–3621; by calling Bonneville's nationwide toll-free request line at 1–800–622–4520; or by accessing Bonneville's Project website at: *www.bpa.gov/goto/BoardmanHemingway.*

FOR FURTHER INFORMATION CONTACT: Jamie Murray, Supervisory Realty Specialist, Bonneville Power Administration—TERR-Kalispell; 2520 US Highway 2 E., Kalispell, MT 59912; toll-free telephone number 1–800–622–4519; or email *jcmurray@bpa.gov* or Katey Grange, Environmental Protection Specialist, Bonneville Power Administration—ECT–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; or email *kcgrange@bpa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Bonneville is a federal agency that owns and operates the majority of the high-voltage electric transmission system in the Pacific Northwest. This system is referred to as the Federal Columbia River Transmission System (FCRTS). The 69-kV Boardman-to-Ione transmission line is part of the FCRTS. This line extends about 30 miles from Bonneville's Boardman Substation to near the Ione Substation, both of which are located in Morrow County, Oregon. About 14 miles of the Boardman-to-Ione transmission line is located along the eastern and southern boundary of the NWSTF Boardman, which is managed by the Navy. This 14-mile-long section currently occupies a 90-foot-wide right-of-way. The structures in this section of right-of-way have height restrictions (100 feet) based on requirements to operate within NWSTF Boardman. The existing land use agreement between Bonneville and the Navy was executed in February of 1971 and subsequently amended in March 2013. This existing land use agreement allows Bonneville to construct, reconstruct, operate, maintain, and access the Boardman-to-Ione transmission line in its current location on NWSTF Boardman.

In 2007, IPC formally proposed the B2H Project by initiating an application process with the BLM to construct, maintain, and operate the B2H Project on BLM-managed lands. As proposed by IPC, the project includes about 290 miles of single-circuit 500-kV transmission line and other ancillary facilities extending from the proposed Longhorn Substation in Morrow County, Oregon, to the existing Hemingway Substation in Owyhee County, Idaho.

The BLM initiated a NEPA process for consideration of IPC's application by publishing a Notice of Intent (NOI) to prepare an EIS for the B2H Project in the **Federal Register** on September 12, 2008. Various federal agencies (including Bonneville), state agencies, counties, and other entities agreed to act as cooperating agencies for the EIS. The BLM then published a revised NOI in the **Federal Register** on July 27, 2010 to address 2010 revisions to the B2H Project application by IPC.

The BLM, in coordination with the cooperating agencies, published a Draft EIS for the B2H Project on December 19, 2014. The Final EIS for the B2H Project was published on November 28, 2016. The Final EIS identified an Agency Preferred Alternative for the B2H Project that was composed of various segments of the Project analyzed in the EIS. This Agency Preferred Alternative included the removal of the Boardman-to-Ione transmission line from NWSTF Boardman, along with potential relocation of this line to nearby private lands.

In November of 2017, the BLM issued a ROD that authorized issuance of a right-of-way grant to IPC for a 250-foot-wide right-of-way for the B2H Project on 85.6 miles of BLM-managed lands, consistent with the route alignment for the Agency Preferred Alternative identified in the Final EIS. In February of 2018, the U.S. Bureau of Reclamation published a ROD authorizing a right-of-way grant to IPC for the portion of the B2H Project right-of-way that crosses about one mile of U.S. Bureau of Reclamation lands under the Agency Preferred Alternative. In November of 2018, the U.S. Forest Service issued a ROD that selected the Agency Preferred Alternative and approved an Electric Transmission Line Easement Special Use Authorization and associated forest plan amendments, including terms and conditions to IPC contained in an easement. The RODs documenting other federal agencies' decisions are in process.

On April 17, 2018, IPC submitted to the Navy an application to obtain an easement to construct about seven miles of the B2H Project within Bonneville's existing Boardman-Ione transmission line right-of-way on NWSTF Boardman, consistent with the Agency Preferred Alternative identified in the B2H Project Final EIS. The easement application states that if IPC constructs the B2H Project within a portion of the Boardman-to-Ione transmission line right-of-way on NWSTF Boardman, then IPC will remove the entire Bonneville Boardman-to-Ione transmission line currently on NWSTF Boardman. The removal of the Boardman-to-Ione transmission line will potentially occur in phases. IPC's application was deemed complete by the Navy on May 16, 2018.

Alternatives Considered

Specific to the removal of the Boardman-to-Ione transmission line from NWSTF Boardman, the B2H Project Final EIS identified and evaluated three design options for the removal and relocation of the Boardman-to-Ione transmission line. Design Option 1 involves partial removal of this transmission line from NWSTF Boardman. Design Option 2 involves full removal of this line from NWSTF Boardman. Finally, Design Option 3 also involves full Removal of this line from NWSTF Boardman but also includes construction of a new step-down substation. These design options are described in Section 2.5.2.1 of the Final EIS.

As part of implementing any of these design options, amendment of the existing land use agreement between Bonneville and the Navy for the Boardman-to-Ione transmission line on NWSTF Boardman is required. The amended land use agreement requires the following conditions be met before Bonneville relinquishes the right-of-way for this line on the NWSTF Boardman:

- A new transmission line and associated infrastructure on the east side of Bombing Range Road be constructed to allow Bonneville to continue service to its customer(s);
- Bonneville is able to secure transmission service under reasonable terms and conditions or own capacity on the new line to continue to provide cost effective and reliable service to its customer(s);
- The B2H Project funds the costs associated with Bonneville relinquishing the right-of-way and replacing the existing service capability and reliable service to its customer; and
- The resolution of any associated real property or commercial issues.

Under the amended land use agreement, if these conditions are realized, Bonneville will relinquish, potentially in phases, its right-of-way along the boundary of NWSTF

Boardman. The Boardman-to-Ione transmission line removal timing, the design of the transmission line to replace the Boardman-to-Ione line, and other supporting infrastructure needed to meet service requirements will depend on the construction of other transmission infrastructure on the east side of Bombing Range Road, across the roadway from NWSTF Boardman. Ultimately, if all Bonneville service and reliability conditions are met and the B2H Project is constructed, under the amended land use agreement, the entire Boardman-to-Ione transmission line will be removed from NWSTF Boardman within 10 years of the B2H Project being placed in service.

If the B2H Project is not constructed on NWSTF Boardman or the Navy does not grant an easement to the B2H project, all terms of the existing land use agreement, including all previous amendments, between Bonneville and the Navy for the Boardman-to-Ione transmission line right-of-way will remain in place and unchanged.

The B2H Project Final EIS also included a No Action Alternative. Under the No Action Alternative, Bonneville would not amend the Boardman-to-Ione transmission line's land use agreement. The B2H Project would not be constructed within the existing Boardman-to-Ione transmission line right-of-way. There would be no changes to the location, operation, maintenance, or Bonneville access for the Boardman-to-Ione transmission line on NWSTF Boardman. Because there would be no ground disturbance or other new environmental impacts related to this portion of the existing Boardman-to-Ione transmission line, the No Action Alternative would be considered the environmentally preferable alternative for Bonneville's action that is the subject of this ROD.

Bonneville's Rationale for Decision

In making its decision to amend the land use agreement with the Navy for the Boardman-to-Ione transmission line, Bonneville has considered and balanced a variety of relevant factors. Bonneville considered the environmental impacts described in the Final EIS, as well as public comments received throughout the NEPA process and on the Draft and Final EISs. Bonneville also considered the following Bonneville purposes (*i.e.,* objectives) identified in the Final EIS:

- Maintain Bonneville's transmission system reliability and performance
- Meet Bonneville's contractual and statutory obligations
- Minimize impacts on the environment
- Minimize costs while meeting Bonneville's power and transmission service needs

Finally, Bonneville considered the decisions by the BLM, U.S. Bureau of Reclamation, and U.S. Forest Service to grant respective approvals, in part, based on the analysis contained in the Final EIS for the B2H Project, for rights-of-way over the lands they manage for the Agency Preferred Alternative. After considering and balancing all of these factors, Bonneville has decided to amend the land use agreement with the Navy that authorizes the on-going operation and maintenance of the 69-kV Boardman-to-Ione transmission line on NWSTF Boardman in Morrow County, Oregon.

Amending the land use agreement will not interfere with or otherwise affect Bonneville's ability to maintain the stability and reliability of its transmission system or for Bonneville to meet contractual or statutory obligations. The implementation of the removal actions based on the reliability and customer conditions identified in the amended land use agreement will ensure that any change in transmission infrastructure will continue to meet Bonneville's system stability and reliability needs and to provide service to its customer(s).

The removal of the Boardman-to-Ione transmission line from NWSTF Boardman and any supporting infrastructure construction, such as a stepdown substation or access roads, will likely result in impacts to soils, land uses, vegetation, wildlife habitat, and, potentially, some sensitive resources. The impacts associated with these activities were analyzed in the B2H Project Final EIS, which also identifies numerous mitigation measures and required design features to reduce, avoid, or compensate for B2H Project impacts. IPC has committed to implement these design features and mitigation measures as part of the development of the B2H Project. Specific to removing the line, methods would be used to minimize ground disturbance and restrict vehicle access in order to minimize potential environmental impacts. In addition, final removal plans would be coordinated with NWSTF Boardman personnel as well as Morrow County Public Works, Oregon Department of Transportation, adjacent landowners, and other relevant agencies. As additional site-specific information to refine the location and nature of the Boardman-to-Ione transmission line's removal activities are further known, Bonneville may identify additional necessary minimization and/or mitigation actions.

Should the Boardman-to-Ione transmission line be removed to accommodate the B2H Project, the estimated cost of the removal and replacement activities will be about $16 million dollars, which will be paid for by the B2H Project. Should the B2H Project not be built, the Boardman-to-Ione transmission line will remain in place and there will be no costs associated with removal and replacement activities. Either way, costs to Bonneville would be minimal to non-existent.

Mitigation

A complete list of required environmental protection measures designed to avoid and/or minimize environmental harm from B2H Project construction, operation, and maintenance activities, is available in Chapter 2 (Table 2–7) of the Final EIS and in Appendix D of BLM's ROD. All the mitigation measures that apply to removal of the Boardman-to-Ione transmission line from NWSTF Boardman are adopted. IPC will be responsible for implementing mitigation measures for their actions identified in the EIS. As additional site-specific information to refine the location and nature of the Boardman-to-Ione transmission line's removal activities are further known, Bonneville may identify additional necessary minimization and/or mitigation actions. Before Bonneville takes any action to begin removal of the Boardman-to-Ione transmission line, Bonneville will prepare a Mitigation Action Plan for all mitigation it intends to implement.

Signed on the 13th day of May 2019.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2019–11140 Filed 5–28–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–855–000.

Applicants: Panoche Valley Solar, LLC.

Description: Report Filing: Refund Report of Panoche Valley Solar, LLC to be effective N/A.

Filed Date: 5/21/19.

Accession Number: 20190521–5109.

Comments Due: 5 p.m. ET 6/11/19.

Docket Numbers: ER19–709–003.

Applicants: Entergy Louisiana, LLC.

Description: Tariff Amendment: Entergy OpCos Reactive Power Update to be effective 1/1/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5117.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1455–001.

Applicants: Wisconsin Public Service Corporation.

Description: Tariff Amendment: TCJA Supplemental Filing to be effective 1/1/2018.

Filed Date: 5/22/19.

Accession Number: 20190522–5098.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1823–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2019–05–21_Amendment RM17–8 Compliance regarding Surplus Interconnection Service to be effective 12/31/9998.

Filed Date: 5/21/19.

Accession Number: 20190521–5128.

Comments Due: 5 p.m. ET 6/11/19.

Docket Numbers: ER19–1921–000.

Applicants: The United Illuminating Company.

Description: Tariff Cancellation: Termination of Localized Costs Sharing Agreement No. 17 to be effective 4/1/2019.

Filed Date: 5/21/19.

Accession Number: 20190521–5136.

Comments Due: 5 p.m. ET 6/11/19.

Docket Numbers: ER19–1922–000.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing re: Option to Build Provisions in EL19–18–000 to be effective 7/22/2019.

Filed Date: 5/21/19.

Accession Number: 20190521–5137.

Comments Due: 5 p.m. ET 6/11/19.

Docket Numbers: ER19–1923–000.

Applicants: Kansas City Power & Light Company.

Description: § 205(d) Rate Filing: KCP&L Certificate of Concurrence for Amended & Restated Interchange Agreement to be effective 5/16/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5000.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1924–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: Compliance filing: Order No. 845 Compliance Filing-Amendments to OATT to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5001.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1925–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: Compliance filing: Order No. 845 Compliance Filing-Amendments to OATT to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5002.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1926–000.

Applicants: Black Hills Power, Inc.

Description: Compliance filing: Order No. 845 Compliance Filing-Amendments to OATT to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5003.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1927–000.

Applicants: Portland General Electric Company.

Description: Compliance filing: Order 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5004.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1928–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3290R2 Sholes Wind GIA to be effective 4/25/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5016.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1929–000.

Applicants: Arizona Public Service Company.

Description: Notice of Cancellation of Rate Schedule No. 125 of Arizona Public Service Company.

Filed Date: 5/21/19.

Accession Number: 20190521–5157.

Comments Due: 5 p.m. ET 6/11/19.

Docket Numbers: ER19–1930–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Tariff Cancellation: Notice of Termination of WR Tariff (sections) (Amended) to be effective 4/8/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5035.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1931–000.

Applicants: Electric Energy, Inc.

Description: Compliance filing: compliance 2019 Attachment M 2 to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5056.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1932–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP–PJM Amended JOA Certificate of Concurrence to be effective 7/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5059.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1933–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3101R3 Heartland Consumers Power District NITSA and NOA to be effective 5/1/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5069.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1934–000.

Applicants: Tucson Electric Power Company.

Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5070.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1935–000.

Applicants: UNS Electric, Inc.

Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5071.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1936–000.

Applicants: Idaho Power Company.

Description: Compliance filing: Order Nos. 845 and 845–A Compliance Filing—LGIP and LGIA Revisions to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5072.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1937–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: Tariff Cancellation: MAIT submits Notice of Cancellation of Generation Facility Transmission IA 599 to be effective 4/30/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5073.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1938–000.

Applicants: Florida Power & Light Company.

Description: Compliance filing: FPL Order No. 845 Compliance Filing-LGIP & LGIA Revisions to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5074.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1939–000.

Applicants: Arizona Public Service Company.

Description: Compliance filing: APS Order No. 845 Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5075.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1940–000.

Applicants: Florida Power & Light Company.

Description: Compliance filing: Order 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5099.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1941–000.

Applicants: Flat Ridge 2 Wind Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5100.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1942–000.

Applicants: Fowler Ridge II Wind Farm LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5102.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1943–000.

Applicants: NorthWestern Corporation.

Description: Compliance filing: Order No. 845 & 845–A Compliance Filing (Montana) to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5107.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1944–000.

Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: The Potomac Edison Company submits Interconnection Agreement No. 4313 to be effective 7/21/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5108.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1945–000.

Applicants: Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company.

Description: Pre-Arranged/Pre-Agreed (Amending 2017 Settlement Agreement) Filing of Pacific Gas and Electric Company, et al.

Filed Date: 5/22/19.

Accession Number: 20190522–5114.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1946–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order Nos. 845 and 845–A—Attachment M to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5123.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1947–000.

Applicants: Puget Sound Energy, Inc.

Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5134.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1948–000.

Applicants: PacifiCorp.

Description: Compliance filing: OATT Order 845 Changes to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5135.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1949–000.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance filing re: Order No. 845 and 845–A revisions to LFIP and LGIA to be effective 12/31/9998.

Filed Date: 5/22/19.

Accession Number: 20190522–5137.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1950–000.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2019–05–22 Order No. 845 Compliance to be effective 12/31/9998.

Filed Date: 5/22/19.

Accession Number: 20190522–5138.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1951–000.

Applicants: ISO New England Inc., Eversource Energy Service Company (as agent).

Description: Compliance filing: Rev. to Schedule 22 of ISO Tariff in Compliance with Order Nos. 845 & 845–A to be effective 12/31/9998.

Filed Date: 5/22/19.

Accession Number: 20190522–5140.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1952–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Revisions to ISO Tariff to Modify Timelines and Scope of Interconnection Studies to be effective 12/31/9998.

Filed Date: 5/22/19.

Accession Number: 20190522–5147.

Comments Due: 5 p.m. ET 6/12/19.

Docket Numbers: ER19–1953–000.

Applicants: El Paso Electric Company.

Description: Compliance filing: OATT Order Nos. 845 and 845–A Compliance Filing Attachment M to be effective 5/22/2019.

Filed Date: 5/22/19.

Accession Number: 20190522–5155.

Comments Due: 5 p.m. ET 6/12/19.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD19–5–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard CIP–003–8.

Filed Date: 5/21/19.

Accession Number: 20190521–5169.

Comments Due: 5 p.m. ET 6/12/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 22, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11160 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–469–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on May 15, 2019, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and Tennessee's blanket certificate issued in Docket No. CP82–413–000, for authorization to

replace a turbine on an existing compressor unit C1, at its existing Compressor Station (CS) 321 in Susquehanna County, Pennsylvania, and to increase firm transportation capacity in a portion of Tennessee's 300 Line by up to 10,000 dekatherms per day (Dth/d), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this prior notice request should be directed to Ben J. Carranza, Director of Regulatory for Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, or call (713) 420–5535, or by email *ben_caranza@kindermorgan.com.*

Specifically, Tennessee proposes to replace existing Solar Turbine Taurus 70–10302S compressor unit at CS 321 with a Taurus 70–10802S compressor unit. The new turbine engine will have 9 ppm $SoLoNO_X$ controls, which will result in lower oxides of nitrogen (NO_X) emissions from Unit C1. The planned replacement of the existing turbine engine will increase the horsepower of Unit C1 by 800 ISO horsepower, which will create an incremental year-round transportation capacity of approximately 10,000 Dth/d in Segments 320 and 321 of Tennessee's 300 Line. Tennessee states that this additional capacity will be made available pursuant to the terms and conditions of Tennessee's Gas Tariff. The estimated cost of the project is $2.4 million.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: May 22, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11174 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7052–003]

City of Portland, Oregon; Notice of Application for Surrender of Exemption, 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. *Type of Proceeding:* Application for surrender of exemption from licensing.

b. *Project No.:* 7052–003.

c. *Date Filed:* May 1, 2019.

d. *Exemptee:* City of Portland, Oregon.

e. *Name of Project:* Ground Water Pumping Station.

f. *Location:* The project is located on the Powell Butte Reservoir, Columbia River, and Sandy Creek, in Multnomah County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Mr. Glenn O. Pratt, Portland Hydroelectric Project Manager, 400 SW Sixth Avenue, Suite 3–125, Portland, OR 97204, (503) 823–6107, *Glenn.Pratt@Portlandoregon.gov.*

i. *FERC Contact:* Ms. Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. Deadline for filing comments, interventions, and protests is June 24, 2019. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments 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–7052–003.

k. *Description of Project Facilities:* The project utilizes three existing water supply conduits carrying water from an existing diversion dam and consists of: (1) A powerhouse containing six pump-turbines with a total installed capacity of 4500 kW; and (2) a switchyard.

l. *Description of Request:* The licensee is proposing to surrender its exemption. The project only operated for 10 test days in 1985. The project never received the water rights from the Oregon Department of Water Resources to operate a hydroelectric facility. The project is not allowed to operate and the exemptee has removed the ability to generate hydroelectricity from its control system. The facilities would remain in its current condition because all of the equipment is necessary for operating the existing water supply system.

m. This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and

reproduction in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive 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 protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: May 22, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11178 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD19–7–000]

InPipe Energy; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On May 14, 2019, InPipe Energy filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed La Brea Regulation Station Hydroelectric Project would have a total installed capacity of up to 100 kilowatts (kW), and would be located in the La Brea Regulation Station, which is on the City of Los Angeles' water supply system. The project would be located in the City of Los Angeles in Los Angeles County, California.

Applicant Contact: Gregg Semler, InPipe Energy, 222 NW Eighth Avenue, Portland, OR 97209, Phone No. (503) 341–0004, Email: *gregg@inpipeenergy.com.*

FERC Contact: Robert Bell, Phone No. (202) 502–6062; Email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A 100-kW turbine-generator located in a 15-by-7 foot concrete vault, adjacent to an existing pressure reducing valve vault in the La Brea Regulation Station; (2) a 12-inch pipeline transporting water from the existing 60-inch mainline to the generator, and returning it to the mainline; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of up to 875 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed La Brea Regulation Station Hydroelectric Project will not interfere with the primary purpose of the conduit, which is to transport water to the City of Los Angeles' municipal water supply distribution system. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is

not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD19–7) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: May 22, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11173 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–230]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands.

b. *Project No:* 2310–230.

c. *Date Filed:* April 4, 2019 and supplemented May 7, 2019.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Drum-Spaulding Hydroelectric Project.

f. *Location:* South Canal in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Brian Madigan, Senior Hydro License Coordinator, Pacific Gas and Electric Company, Mail Code N11D, P.O. Box 770000, San Francisco, California 94177; phone (415) 973–3059.

i. *FERC Contact:* Ms. Joy Kurtz at 202–502–6760, or *joy.kurtz@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments 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–2310–230.

k. *Description of Request:* The licensee requests Commission approval to grant Placer County Water Agency (PCWA) permission to use project lands within the project boundary to construct and operate a raw water intake on South Canal in order to meet PCWA's water supply demands for western Placer County. The water withdrawn from the project would be done in accordance with an existing water supply agreement between the licensee and PCWA, which obligates the licensee to provide a certain volume of water to PCWA for purchase. The raw water intake on South Canal would withdraw a maximum of 62 million gallons of water per day and serve as a redundant withdrawal location to other withdrawal points within the project that are operated by PCWA. Because of this redundancy, water withdrawn via the intake would not increase the amount of water currently withdrawn from the project area. Construction activities within the project boundary would include installation of the intake structure, which would be recessed into the canal, and outfitted with an inclined trash rack and three five- foot slide gates. The velocity through the trash rack on the intake structure would not exceed 0.8 feet per second. The intake structure would connect to three existing 60-inch steel pipes. Additionally, storm drain facilities located near one of PCWA's transfer basins, located on the bank side of South Canal, would be restored following construction of the intake. This work would entail repairs to the concrete walls and restoration of an existing drainage inlet and manhole.

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 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.

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. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* 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 protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the non-project use application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11177 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–18–000]

Commission Information Collection Activities (FERC–740); 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–740 (Availability of E-Tag Information to Commission Staff) 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 March 22, 2019, the Commission published a Notice in the **Federal Register** (84 FR 10820) in Docket No. IC19–18–000 requesting public comments. The Commission received no public comments.

DATES: Comments on the collection of information are due June 28, 2019.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0254, 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. IC19–18–000, 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–740, Availability of E-Tag Information to Commission Staff.

OMB Control No.: 1902–0254.

Type of Request: Three-year extension of the FERC–740 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: In Order 771,[1] the FERC–740 information collection (providing Commission staff access to e-Tag data) was implemented to provide the Commission, Market Monitoring Units, Regional Transmission Organizations, and Independent System Operators with information that allows them to perform market surveillance and analysis more effectively. The e-Tag information is necessary to understand the use of the interconnected electricity grid, particularly transactions occurring at interchanges. Due to the nature of the electric grid, an individual transaction's impact on an interchange cannot be assessed adequately in all cases without information from all connected systems, which is included in the e-Tags. The details of the physical path of a transaction included in the e-Tags helps the Commission to monitor, in particular, interchange transactions more effectively, detect and prevent price manipulation over interchanges, and improve the efficient and orderly use of the transmission grid. For example, the e-Tag data allows the Commission to identify transmission reservations as they go from one market to another and link the market participants involved in that transaction.

Order No. 771 provided the Commission access to e-Tags by requiring that Purchasing-Selling Entities [2] (PSEs) and Balancing

[1] Order 771 was issued in Docket No. RM11–12 (77 FR 76367, 12/28/2012).

[2] A Purchasing-Selling Entity is the entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services.

Authorities (BAs), list the Commission on the ''CC'' list of e-Tags so that the Commission can receive a copy of the e-Tags (the '' 'CC' list requirement''). The Commission accesses the e-Tags by contracting with a commercial vendor, OATI, that collects all e-Tags on which FERC is identified as a ''CC'' list recipient in a secure database to which FERC staff has access.

In early 2014, the North American Energy Standards Board (NAESB) incorporated the ''CC'' list requirement on e-Tags as part of the tagging process.[3] Even before NAESB added the FERC requirement to the tagging standards, the ''CC'' list requirement, with exemptions for e-Tags between non-U.S. BAs that do not go through any U.S. BAs, had already been programmed into the industry standard tagging software so as to make the inclusion of FERC in the ''CC'' list of any new e-Tag automatic, where appropriate.

The Commission expects that PSEs and BAs will continue to use existing, automated procedures to create and validate the e-Tags in a way that automatically provides the Commission with access to them. In the rare event that a newly formed. non-U.S. BA would need to alert e-Tag administrators that certain tags it generates qualify for exemption under the Commission's regulations (*e.g.,* transmissions from a new non-U.S. BA into another non-U.S. BA using a path that does not go through a U.S. BA), this administrative function would be expected to require less than an hour of effort total from both the BA and an e-Tag administrator to include the BA on the exemption list. New exempt BAs occur less frequently than every year, but for the purpose of estimation we will conservatively assume one appears each year creating an additional burden and cost associated with the Commission's FERC–740 of one hour and $65.68.[4]

Type of Respondents: Purchasing-Selling Entities and Balancing Authorities.

Estimate of Annual Burden:[5] The Commission estimates the burden and cost for FERC–740 as follows based on the distinct e-Tags submitted to the Commission in 2017 (the most recent full year available).

FERC–740	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Purchasing-Selling Entities (e-Tag Authors).	355	4,482 (rounded)	1,591,208	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.
Balancing Authorities	81	19,645 (rounded).	1,591,208	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.
New Balancing Authority [as noted above].	1	1	1	1 hr.; $65.68	1 hr.; $65.68	$65.68.
Total					1 hr.; $65.68	$65.68.

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: May 22, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11176 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL18–182–000, ER18–2364–000, ER19–1428–000, ER13–2266–004, ER18–1639–000, ER18–1639–002 and ER18–1639–003]

ISO New England Inc. and Constellation Mystic Power, LLC; Notice of Staff-Led Public Meeting

Take notice that Federal Energy Regulatory Commission (Commission) staff will convene a staff-led public meeting on Monday, July 15, 2019, beginning at 10:00 a.m. (ET). The public meeting will be held in the Commission Meeting Room at Commission headquarters, 888 First Street NE, Washington, DC 20426. Commissioners may attend and participate.

On July 2, 2018, the Commission directed the ISO New England Inc. (ISO–NE) to submit permanent revisions to the ISO–NE Transmission, Markets and Services Tariff (Tariff) reflecting improvements to its market design to better address regional fuel security concerns,[1] which are due on October 15, 2019.[2] On April 22, 2019, ISO–NE, the New England States Committee on Electricity, and the New England Power Pool (NEPOOL) Participants Committee jointly requested a public meeting to share with Commission staff information about efforts to develop these proposed Tariff revisions without violating the Commission's *ex parte* rules. This notice of public meeting is in response to that request.

This staff-led public meeting will consist of three, 90-minute presentations by ISO–NE, NEPOOL stakeholders, and representatives from New England states with time for questions and answers reserved at the end of the meeting. Questions will only be permitted from Commission staff and Commissioners. Further information

Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities. Purchasing-Selling Entities are typically E-Tag Authors.

[3] *NAESB Electronic Tagging Functional Specifications, Version 1.8.2.*

[4] The estimated hourly cost (wages plus benefits) provided in this section is based on the figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics2_22.htm*), assuming (a) 15 minutes legal (code 23–0000), at $143.68/hour, and (b) 45 minutes information and record clerk (code 43–4199), at $39.68/hour.

[5] ''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 Part 1320.

[1] *ISO New England Inc.,* 164 FERC ¶ 61,003, at P 2 (2018).

[2] Notice of Extension of Time, Docket No. EL18–182–000 (March 18, 2019).

related to this public meeting will be provided in a supplemental notice.

All interested persons may attend the public meeting. Registration is not required. However, in-person attendees are encouraged to pre-register on-line at: *https://www.ferc.gov/whats-new/registration/07-15-19-form.asp.* In-person attendees should allow time to pass through building security procedures before the 10:00 a.m. start time of the public meeting.

The public meeting will be webcast. A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

The public meeting will not be transcribed. PowerPoint slides or printed documents used in the public meeting will be entered into the record in Docket No. EL18–182–000.

Commission public meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this public meeting, please contact Frank Swigonski by phone at (202) 502–8089 or by email at *frank.swigonski@ferc.gov.* For information related to logistics, please contact Sarah McKinley at (202) 502–8368 or by email at *sarah.mckinley@ferc.gov.*

Dated: May 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11162 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–73–000]

Birdsboro Power LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 21, 2019, the Commission issued an order in Docket No. EL19–73–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Birdsboro Power LLC's proposed initial reactive power tariff to provide Reactive Supply and Voltage Control from Generational or Other Sources Service may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Birdsboro Power LLC,* 167 FERC ¶ 61,162 (2019).

The refund effective date in Docket No. EL19–73–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–73–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: May 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11164 Filed 5–28–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9992–29]

Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, correction.

SUMMARY: EPA issued a notice in the **Federal Register** on March 19, 2019, concerning the cancellation of certain pesticide registrations and amendments to terminate uses. This document is being issued to correct Table 1 of the cancellation notice by removing two entries which were revised to extend the phase out for cancellation.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 341–0367; email address: *Green.Christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What does this correction do?

This notice is being issued to correct Table 1 of the cancellation notice that published in the **Federal Register** on March 19, 2019 (84 FR 10067) (FRL–9989–85). This correction removes two entries in Table 1 that were revised to extend the phase out date for cancellation. As such, FR Doc. 2019–05157 that published in the **Federal Register** on March 19, 2019 (84 FR 10067) (FRL–9989–85) is corrected as follows:

1. On page 10068, in Table 1, remove the complete entries for: ''264–736 and 264–740''.

2. Insert the following table below Table 1.

TABLE 1A—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
264–736	264	Bayleton Technical Fungicide	Triadimefon.
264–740	264	Bayleton 50% Concentrate	Triadimefon.

The registrants of the two registrations in Table 1A, have requested the cancellations to be effective on December 31, 2020.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 16, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–11129 Filed 5–28–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0091; FRL–9994–18]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of the products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 28, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0091, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain pesticide product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this requests, EPA intends to issue an order canceling the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
100–1222	100	Quadris S	Azoxystrobin.
279–3555	279	Nuance Herbicide	Tribenuron-methyl.
279–3559	279	Harass Herbicide	Thifensulfuron.
279–3561	279	Chisum Herbicide	Chlorsulfuron & Metsulfuron.
279–3562	279	Report Herbicide	Chlorsulfuron.
279–3573	279	Chi-Chlorsul NC-75 Herbicide	Chlorsulfuron.
279–9633	279	Ciramet Herbicide	Metsulfuron.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
538–189	538	Turf Builder Plus Halts	Pendimethalin.
538–214	538	Proturf Fertilizer Plus Preemergent Weed Control	Pendimethalin.
1015–82	1015	Sanafoam Diquat	Diquat dibromide.
1043–26	1043	1-Stroke Environ	2-Benzyl-4-chlorophenol; 4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
1043–87	1043	Vesphene II SE	4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
1043–91	1043	LPH Master Product	4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
1043–92	1043	LPH SE	4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
1043–114	1043	Vesta-Syde Interim Instrument Decontamination Solution.	4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
2749–582	2749	Novaluron EC Insecticide	Novaluron.
2749–583	2749	Novaluron Technical MUP	Novaluron.
19713–621	19713	Drexel Aquapen	Pendimethalin.
42750–66	42750	Gly Star Ready-To-Use Grass and Weed Killer	Glyphosate-isopropylammonium.
61282–59	61282	DC & R Disinfectant	Formaldehyde; Alkyl* dimethyl benzyl ammonium chloride *(67%C12, 25%C14, 7%C16, 1%C18) & 2-(Hydroxymethyl)-2-nitro-1,3-propanediol.
62719–12	62719	Telone C–17	Chloropicrin & Telone.
62719–457	62719	Asulam 400	Asulam, sodium salt.
71655–3	71655	Sodium Hypochlorite 12.5%	Sodium hypochlorite.
71655–4	71655	Sodium Hypochlorite	Sodium hypochlorite.
89442–44	89442	Prodiazone Select	Prodiamine & Sulfentrazone.
OR–080014	400	Comite	Propargite.
OR–080016	400	Comite	Propargite.
OR–080017	400	Comite	Propargite.
OR–080018	400	Comite	Propargite.
OR–080019	400	Comite	Propargite.
OR–080026	62719	Starane Ultra	Fluroxypyr 1-methylheptyl ester.
OR–080031	400	Acramite-4SC	Bifenazate.
OR–080033	400	Dimilin 2L	Diflubenzuron.
TN–130004	100	Boundary(R) 6.5EC Herbicide	Metribuzin & S-Metolachlor.
WA–130011	5481	Parazone 3SL Herbicide	Paraquat dichloride.
WA–140003	5481	Abba Ultra Miticide/Insecticide	Abamectin.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
400	Macdermid Agricultural Solutions, Inc., C/O Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
538	The Scotts Company, 14111 Scottslawn Road, Marysville, OH 43041.
1015	Douglas Products and Packaging Company, LLC, D/B/A Douglas Products and Packaging, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
1043	Steris Corporation, P.O. Box 147, St. Louis, MO 63166–0147.
2749	Aceto Agricultural Chemicals Corp., 4 Tri Harbor Court, Port Washington, NY 11050–4661.
5481	Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.
42750	Albaugh, LLC, P.O. Box 2127, Valdosta, GA 31604–2127.
61282	Hacco, Inc., 620 Lesher Place, Lansing, MI 48912.
62719	Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054.
71655	BASF Corporation, 100 Park Avenue, Florham Park, NJ 07932.
89442	Prime Source, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation,

EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants have requested that EPA waive the 180-day comment period.

Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit II.

For voluntary product cancellations, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 21, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–11123 Filed 5–28–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0978; FRL–9994–34–OECA]

Access by EPA Subcontractors to Information Claimed as Confidential Business Information (CBI) Submitted Under Titles I and II of the Clean Air Act (CAA) and the Prevent Pollution From Ships Act (APPS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Clean Air Act (CAA), Act to Prevent Pollution from Ships (APPS) and regulations require that the United States Environmental Protection Agency (EPA) provide notice to interested parties before any contractor may be provided access to confidential business information (CBI). EPA is providing notice that several subcontractors of a previously identified contractor will be given access to CBI. This permits the CBI owners and any other interested parties to comment on the subcontractors' proposed access to CBI so that EPA's Office of Enforcement and Compliance Assurance can utilize the named subcontractors to provide compliance assistance and enforcement services without providing individualized notice to CBI owners.

DATES: Comments must be received on or before June 3, 2019. Subcontractors' access to information collected under the CAA Titles I and II, and the APPS, will begin on June 4, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA HQ–OECA–2012–0978, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: docket.oeca@epa.gov.* Include Docket ID No. EPA–HQ–OECA–2012–0978 in the subject line of the message.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air Enforcement Division, Office of Enforcement and Compliance Assurance (Mail Code 8MSU), Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202; telephone number: (303) 312–6445; fax number (303) 312–7208; email address: *kimes.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to certain parties, including: Vehicle manufacturers and importers; engine manufacturers and importers; motor vehicle fuel and fuel additive producers and importers; manufacturers, importers, distributors and installers of vehicle and engine emission control equipment and parts; and any other parties subject to the CAA, APPS and regulations found in 40 CFR parts 79, 80, 85, 86, 89–92, 94, 1033, 1036, 1037, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068.

This **Federal Register** notice may be of particular relevance to parties that have submitted data to EPA under the above-listed regulations. Because other parties may also be interested, EPA has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket ID No. EPA–HQ–OECA–2012–0978.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as CBI or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket ID No. EPA–HQ–OECA–2012–0978 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as CBI to Contractors

EPA's OECA has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to give regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), OECA collects compliance reports and other information from the regulated industry. Occasionally, the information submitted to, or obtained by, EPA, is claimed to be CBI by persons submitting data to EPA. Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B, and in accordance with EPA procedures that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to EPA contractors or subcontractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the EPA contractor and subcontractor and the EPA contractor and subcontractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

On March 12, 2019, EPA provided notice in the **Federal Register** of, and an opportunity to comment on, EPA's determination that its contractor Eastern Research Group, Incorporated, (ERG) 14555 Avion Parkway, Suite 200, Chantilly, VA 20151, required access to CBI submitted to EPA under Section 114 of the CAA, Section 208 of the CAA, and the APPS for the work ERG would be conducting under Contract Number 68HERH19C0004. *See* Access by United States Environmental Protection Agency (EPA) Contractors to Information Claimed as Confidential Business Information (CBI) Submitted under Clean Air Act (CAA), Title I, Programs and Activities Air, and Title II Emission Standards for Moving Sources, and Act To Prevent Pollution From Ships (APPS), 84 FR 8859 (March 12, 2019). In accordance with 40 CFR 2.301(h), EPA has now determined that the subcontractors listed below also require access to CBI submitted to EPA under Section 114 of the CAA, Section 208 of the CAA, and the APPS, and we are providing notice and an opportunity to comment on EPA subcontractors' access to information claimed as CBI. OECA collects this data in order to monitor compliance with regulations promulgated under the CAA Title II Emission Standards for Moving Sources, the APPS, and the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the subcontractors identified below on a need-to-know basis.

Under Contract Number 68HERH19C0004, ERG provides enforcement support for EPA's CAA mobile source regulatory and enforcement activities, including field inspections, investigations, audits, and other CAA regulatory and enforcement support that involve access to information claimed as CBI. ERG also employs subcontractors, who support these activities, under the above-listed contract. These subcontractors include: Sunblock Systems, Inc.; PG Environmental, LLC; BDO USA, LLP; Dr. James J. Carroll; Dr. Yiqun Huang; Dr. Maureen Kaplan; and Capital Reporting Company. Access to data, including information claimed as CBI, will commence six days after the date of publication of this notice in the **Federal Register**, and will continue until March 1, 2024. If the contract and associated subcontracts are extended, this access will continue for the remainder of the ERG contract without further notice. If the contract expires prior to March 1, 2024, the access will cease at that time. If ERG employs additional subcontractors to support EPA on a regular basis or on a limited or one-time basis under the above-listed contract, and those subcontractors require access to CBI, EPA will notify affected companies of the contemplated disclosure and provide them with an opportunity to comment by either sending them a letter or by publishing an additional notice in the **Federal Register**.

Parties who wish to obtain further information about this **Federal Register** notice, or about OECA's disclosure of information claimed as CBI to subcontractors, may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 16, 2019.

Phillip A. Brooks,

Director, Air Enforcement Division.

[FR Doc. 2019–11170 Filed 5–28–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–83; DA 19–432]

Meeting of the Broadband Deployment Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC announces and provides an agenda for the first meeting of the re-chartered Broadband Deployment Advisory Committee (BDAC).

DATES: Thursday, June 13, 2019. The meeting will come to order at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Justin L. Faulb, Designated Federal Authority (DFO) of the BDAC, at *justin.faulb@fcc.gov* or 202–418–1589; Darrel Pae, Deputy DFO of the BDAC, at *darrel.pae@fcc.gov* or 202–418–0687; or Zachary Ross, Deputy DFO of the BDAC, at *Zachary.ross@fcc.gov* or 202–418–1033. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will accommodate as many participants as possible; however, admittance will be limited to seating availability. The FCC will also provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *www.fcc.gov/live.* Oral statements at the meeting by parties or entities not represented on the BDAC will be permitted to the extent time permits, at the discretion of the BDAC Chair and the DFO. Members of the public may submit comments to the BDAC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the BDAC should be filed in GN Docket No. 17–83.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request.

Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: The agenda of the BDAC's first meeting will be to introduce the BDAC members, describe the working groups, assign members to working groups, and begin discussing how to accelerate the deployment of broadband by reducing and/or removing regulatory barriers to infrastructure investment. The BDAC will also receive a status report from the Disaster Response and Recovery Working Group. This agenda may be modified at the discretion of the BDAC Chair and the Designated Federal Officer (DFO).

Federal Communications Commission.

Pamela Arluk,

Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2019–11184 Filed 5–28–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2019–N–04]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as the ''American Survey of Mortgage Borrowers,'' which has been assigned control number 2590–0015 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2019.

DATES: Interested persons may submit comments on or before July 29, 2019.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'American Survey of Mortgage Borrowers, (No. 2019–N–04)''' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''American Survey of Mortgage Borrowers, (No. 2019–N–04)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Saty Patrabansh, Manager, National Mortgage Database Program, *Saty.Patrabansh@fhfa.gov,* (202) 649–3213; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

FHFA is seeking OMB clearance under the PRA for a collection of information known as the ''American Survey of Mortgage Borrowers'' (ASMB). The ASMB is an annual, voluntary survey of individuals who currently have a first mortgage loan secured by single-family residential property. The 2018 survey questionnaire consisted of 93 questions designed to learn directly from mortgage borrowers about their mortgage experience, any challenges they may have had in maintaining their mortgage and, where applicable, in terminating a mortgage. It requested specific information on: the mortgage; the mortgaged property; the borrower's experience with the loan servicer; and the borrower's financial resources and financial knowledge. FHFA is also seeking clearance to pretest future iterations of the survey questionnaire and related materials from time to time through the use of focus groups. A copy of the 2018 survey questionnaire appears at the end of this notice.

The ASMB is a component of the ''National Mortgage Database'' (NMDB) Program, which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB). The NMDB Program is designed to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act.[1] Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public.

As a means of fulfilling these and other statutory requirements, as well as to support policymaking and research regarding the residential mortgage markets, FHFA and CFPB jointly established the National Mortgage Database Program in 2012. The Program is designed to provide comprehensive information about the U.S. mortgage market and has three primary components: (1) The NMDB; (2) the quarterly National Survey of Mortgage Originations (NSMO); and (3) the ASMB.

The NMDB is a de-identified loan-level database of closed-end first-lien residential mortgage loans that is representative of the market as a whole, contains detailed loan-level information on the terms and performance of the mortgages and the characteristics of the associated borrowers and properties, is continually updated, has an historical component dating back to 1998, and provides a sampling frame for surveys to collect additional information. The core data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgage files outstanding at any time between January 1998 and the present in the files of Experian, one of

[1] 12 U.S.C. 4544(c).

the three national credit repositories. A random 1-in-20 sample of mortgages newly reported to Experian is added each quarter.

The NMDB also draws information on mortgages in the NMDB datasets from other existing sources, including the Home Mortgage Disclosure Act (HMDA) data that are maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, and data files maintained by Fannie Mae and Freddie Mac and by federal agencies. FHFA obtains additional data from the quarterly NSMO, which provides critical and timely information on newly-originated mortgages and those borrowing that are not available from any existing source, including: The range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans.[2]

While the NSMO provides information on newly-originated mortgages, the ASMB solicits information on borrowers' experience with maintaining their existing mortgages, including their experience maintaining mortgages under financial stress, their experience in soliciting financial assistance, their success in accessing federally-sponsored programs designed to assist them, and, where applicable, any challenges they may have had in terminating a mortgage loan. This type of information is not available from any other source. Beginning in 2016, the ASMB questionnaire has been sent out annually to a stratified random sample of 10,000 borrowers in the NMDB. In 2018, the ASMB had an 18.7 percent overall response rate, which yielded 1,793 survey responses.

When fully processed, the information collected through the ASMB will be used, in combination with information obtained from existing sources in the NMDB, to assist FHFA in understanding how the performance of existing mortgages is influencing the residential mortgage market, what different borrower groups are discussing with their servicers when they are under financial stress, and consumers' opinions of federally-sponsored programs designed to assist them. This important, but otherwise unavailable, information will assist FHFA in the supervision of its regulated entities (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and in the development and implementation of appropriate and effective policies and programs. The information will also be used for research and analysis by CFPB and other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets and to provide a resource for research and analysis by academics and other interested parties outside of the government.

As it has done in the past, FHFA expects to continue to sponsor focus groups to pretest possible survey questions and revisions to the survey materials. Such pretesting ultimately helps to ensure that the survey respondents can and will answer the survey questions and will provide useful data on their experiences with maintaining their existing mortgages. FHFA uses information collected through the focus groups to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information is also used to help determine how best to organize and format the survey questionnaire.

B. Burden Estimate

This information collection comprises two components: (I) The ASMB survey; and (II) the pre-testing of the survey questionnaire and related materials through the use of cognitive testing. FHFA conducted the survey annually from 2016 through 2018. Although the ASMB is nominally an annual survey, the decision as to whether the ASMB will be conducted in 2019 and thereafter depends upon the availability of funding and on assessments as to whether there is a continuing need for the type of data collected through the survey. For purposes of these burden estimates, however, FHFA assumes that it will conduct the survey once annually over the next three years and that it will conduct two rounds of pre-testing on each set of survey materials.

FHFA has analyzed the total hour burden on members of the public associated with conducting the survey (5,000 hours) and with pre-testing the survey materials (24 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 5,024 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the ASMB questionnaire will be sent to 10,000 recipients each time it is conducted. Although it expects that only about 1,800 of those surveys will be returned, FHFA has calculated the burden estimates below as if all of the surveys will be returned. Based on the reported experience of respondents to earlier ASMB questionnaires, FHFA estimates that it will take each respondent 30 minutes to complete each survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 5,000 hours for the survey phase of this collection (1 survey per year × 10,000 respondents per survey × 30 minutes per respondent = 5,000 hours).

II. Pre-Testing the Materials

FHFA estimates that it will sponsor two focus groups prior to conducting each annual survey, with 12 participants in each focus group, for a total of 24 focus group participants. It estimates the participation time for each focus group participant to be one hour, resulting in a total annual burden estimate of 24 hours for the pre-testing phase of the collection (2 focus groups per year × 12 participants in each group × 1 hour per participant = 24 hours).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: May 23, 2019.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

[2] OMB has cleared the NSMO under the PRA and assigned it control no. 2590–0012, which expires on April 30, 2020.

What happened after you got your mortgage?

The most effective way to understand the benefits and problems with mortgages and owning a home is to ask you about your experiences.

The Federal Housing Finance Agency and the Consumer Financial Protection Bureau are working together to improve the mortgage process for future homeowners. Your experience will help us understand mortgages today.

You can complete this paper copy or complete the survey online. The online version may be easier to complete because it skips questions that do not apply to you. Online responses are also processed more quickly making it less likely that you will receive reminders to complete this survey. The online questionnaire can be completed in either English or Spanish as explained below.

To complete the survey online

Go to www.ASMBsurvey.com

LOG IN with your **unique survey PIN #** provided in the letter.

Esta encuesta está disponible en español en línea

Visite al sitio web www.ASMBsurvey.com
Inicie la sesión con su número PIN único de la encuesta que se encuentra en la carta adjunta.

You can find more information on our websites - fhfa.gov and consumerfinance.gov

Thank you for sharing your experience with us.

We look forward to hearing from you.

Privacy Act Notice: In accordance with the Privacy Act, as amended (5 U.S.C. § 552a), the following notice is provided. The information requested on this survey is collected pursuant to 12 U.S.C. 4544 for the purposes of gathering information for the National Mortgage Database. Routine uses which may be made of the collected information can be found in the Federal Housing Finance Agency's System of Records Notice (SORN) FHFA-21 National Mortgage Database. Providing the requested information is voluntary. Submission of the survey authorizes FHFA to collect the information provided and to disclose it as set forth in the referenced SORN.

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB No. 2590-0015
Expires 7/31/2019

1. **At any time in 2016 and 2017 did you have a mortgage loan?**

☐ Yes, I had (or still have) at least one mortgage loan
☐ No, I did not have a mortgage loan on any property → **Go to 67 on page 7**

2. **Which one of these reasons best describes why you took out this mortgage?** *If you had more than one mortgage during that time, please refer to your experiences with the mortgage you took out the earliest as you complete this survey.*

☐ To buy a property
☐ To refinance or modify an earlier mortgage
☐ To add/remove a co-borrower
☐ To finance a construction loan
☐ To take out a new loan on a mortgage-free property
☐ Some other purpose (specify) _____
_____

3. **When did you take out this mortgage?**

_____ / _____
month year

4. **What was the dollar amount you borrowed at the time you took out this mortgage?**

$ _____ .00
☐ Don't know

5. **What was the monthly payment, including the amount paid to escrow for taxes and insurance?**

$ _____ .00
☐ Don't know

6. **What was the interest rate on this mortgage?**

_____ %
☐ Don't know

7. **Who signed/co-signed for this mortgage?** *Mark all that apply*

☐ I signed
☐ Spouse/partner including a former spouse/partner
☐ Parents
☐ Children
☐ Other relatives
☐ Other (e.g. friend, business partner)

8. **Did/does this mortgage have...**

	Yes	No	Don't Know
A prepayment penalty *(fee if the mortgage is paid off early)*	☐	☐	☐
An escrow account for taxes and/or homeowner insurance	☐	☐	☐
An adjustable rate *(one that can change over the life of the loan)*	☐	☐	☐
A balloon payment	☐	☐	☐
Interest-only monthly payments	☐	☐	☐
Private mortgage insurance	☐	☐	☐

9. **When you took out this mortgage, how satisfied were you with the...**

	Very	Somewhat	Not At All
Mortgage lender/broker you used	☐	☐	☐
Application process	☐	☐	☐
Documentation process required for the loan	☐	☐	☐
Loan closing process	☐	☐	☐
Information in mortgage disclosure documents	☐	☐	☐
Timeliness of mortgage disclosure documents	☐	☐	☐
Settlement agent	☐	☐	☐

10. **At the time you took out this mortgage, how satisfied were you that it was the one with the...**

	Very	Somewhat	Not At All
Best terms to fit your needs	☐	☐	☐
Lowest interest rate you could qualify for	☐	☐	☐
Lowest closing cost	☐	☐	☐

11. **A loan servicer is the company you send your mortgage payments to, but it may not be the company you got your mortgage from. Did the company you send your mortgage payments to ever change?**

☐ Yes
☐ No
☐ Don't know → **Skip to 15 on page 2**

12. **If yes, when did the loan servicer change (if more than once, the first time the servicer changed)?**

☐ At or shortly after closing
☐ Within the first year after closing
☐ Sometime later

ASMB 2018_v3
24594

Draft

13. If your loan servicer changed, how many times did the loan servicer change for this loan?

☐ 1 ☐ 2 ☐ 3 or more times

14. When the loan servicer last changed...

	Yes	No
Did the new loan servicer tell you when and where to send your payments?	☐	☐
Did the due date or frequency of payments change?	☐	☐
Did the mortgage payments or loan terms change?	☐	☐
Were any payments mishandled?	☐	☐

15. Did your loan servicer...

	Yes	No
Send out periodic statements	☐	☐
Provide a coupon payment book	☐	☐
Apply payments correctly	☐	☐
Provide clear information on how to contact them	☐	☐

16. Did you ever contact this loan servicer to...

	Yes	No
Confirm receipt of a payment	☐	☐
Correct errors in your file	☐	☐
Ask about escrow or property taxes	☐	☐
Ask about pre-paying or paying more than the required regular payment	☐	☐

The Property

17. When did you first become the owner of this property?

_____ / _____
month year

18. Which one of the following best describes this property?

☐ Single-family detached house
☐ Townhouse, row house, or villa
☐ Mobile home or manufactured home
☐ 2-unit, 3-unit, or 4-unit dwelling
☐ Apartment (or condo/co-op) in apartment building
☐ Unit in a partly commercial structure
☐ Other (specify) _____

19. What was the purchase price of this property, or if you built it, the construction and land cost?

$ _____ .00 ☐ Don't know

20. About how much do you think this property is worth today, that is, what could it sell for now?

$ _____ .00 ☐ Don't know

21. Which one of these ways did you use this property 18 months to 2 years ago?

☐ Primary residence *(where you spent the majority of your time)*
☐ Seasonal or second home
☐ Home for other relatives
☐ Rental or investment property
☐ Other (specify) _____

22. Which one of these ways describes how you use this property today?

☐ Primary residence *(where you spend the majority of your time)*
☐ Seasonal or second home
☐ Home for other relatives
☐ Rental or investment property
☐ Other (specify) _____
_____
☐ No longer have the property

23. Did we mail this survey to the address of the property you financed with this mortgage?

☐ Yes ☐ No

24. Thinking about the neighborhood where this property is located, how have the following changed in the last couple of years?

	Significant Increase	Little/No Change	Significant Decrease
Number of homes for sale	☐	☐	☐
Number of vacant homes	☐	☐	☐
Number of homes for rent	☐	☐	☐
Number of foreclosures or short sales	☐	☐	☐
House prices	☐	☐	☐
Overall desirability of living there	☐	☐	☐

Draft

25. What do you think will happen to the prices of homes in this neighborhood over the next couple of years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Remain about the same
- ☐ Decrease a little
- ☐ Decrease a lot

26. In the next couple of years, how do you expect the overall desirability of living in this neighborhood to change?

- ☐ Become more desirable
- ☐ Stay about the same
- ☐ Become less desirable

Paying On This Mortgage

27. At any time during the past couple of years, did you have any concerns or face any difficulties making your mortgage payments?

- ☐ Yes
- ☐ No → **Skip to 48 on page 5**

28. When did you start having difficulties making the mortgage payments?

- ☐ 2015 or earlier
- ☐ First half 2016
- ☐ Second half 2016
- ☐ 2017 or later

29. When you faced these difficulties, what happened to the mortgage payments?

- ☐ Made all the payments on time
- ☐ Made one or more late payments but did not skip any payment
- ☐ Skipped one or more payments

30. Were these difficulties serious enough that you or your loan servicer had concerns that you might not be able to afford the mortgage or continue living in your home?

☐ Yes ☐ No

31. Did any of the following make it difficult to make your mortgage payments?

	Yes	No
Job loss	☐	☐
Retirement	☐	☐
Business failure	☐	☐
Separation or divorce	☐	☐
Illness, disability or death of someone in your household	☐	☐
Disaster affecting this property	☐	☐
Increase in required mortgage payments	☐	☐
Unexpected expenses	☐	☐
Payments for other mortgages (e.g. HELOC, 2nd mortgage)	☐	☐
Payments for other large debts	☐	☐

32. What actions, if any, did you (or your spouse/partner) take to address the difficulties paying this mortgage?

	Yes	No
Borrowed money from family or friend	☐	☐
Borrowed money from a financial institution	☐	☐
Borrowed from or cashed out a retirement account	☐	☐
Sold other assets	☐	☐
Rented part of the house or added roommates	☐	☐
Increased work hours	☐	☐
Started a second job	☐	☐
Started a new or better paying job	☐	☐
Reduced monthly expenses	☐	☐
Consolidated debt	☐	☐
Filed for bankruptcy	☐	☐
Tried to sell the property but could not	☐	☐
Sold the property	☐	☐
Did nothing	☐	☐
Other (specify) _____	☐	☐

Draft

33. When you were having difficulties, did you talk to a professional housing counselor or take a course about managing your finances from an expert?

- ☐ Yes
- ☐ No → **Skip to 37**

34. Was your counseling provided...

	Yes	No
In person, one-on-one	☐	☐
In person, in a group	☐	☐
Over the phone	☐	☐
Online	☐	☐
In a language other than English	☐	☐

35. How many hours was your counseling?

- ☐ Less than 3 hours
- ☐ 3 – 6 hours
- ☐ 7 – 12 hours
- ☐ More than 12 hours

36. Overall, how helpful was your counseling?

☐ Very ☐ Somewhat ☐ Not at all

37. When you were having difficulties making the mortgage payment, did...

	Yes	No
Your loan servicer try to contact you by phone, mail or other means?	☐	☐
You ever try to contact your loan servicer to discuss your difficulties?	☐	☐
You ever talk with the loan servicer or their representative?	☐	☐

38. Did you get information from or talk with your loan servicer about...

	Yes	No	Don't Know
Refinancing your mortgage	☐	☐	☐
A loan modification	☐	☐	☐
Available government programs	☐	☐	☐
Financial counseling	☐	☐	☐
Debt consolidation	☐	☐	☐
A way to get caught up on missed payments	☐	☐	☐
Selling or giving up the property	☐	☐	☐
Other (specify) _____ _____	☐	☐	☐

39. Did the loan servicer offer you...

	Yes	No	Don't Know
A pre-approved plan to modify your mortgage payment permanently	☐	☐	☐
A way for you to apply to modify your mortgage payment permanently	☐	☐	☐
A temporary suspension or reduction of your mortgage payment	☐	☐	☐
A repayment plan to make up missed payments	☐	☐	☐
A way to sell the property to satisfy the mortgage	☐	☐	☐
A way to give the property to the lender to satisfy the mortgage	☐	☐	☐

40. Is English your primary language?

- ☐ Yes → **Skip to 42**
- ☐ No

41. Did the loan servicer provide you with the following in your primary language? If yes, were you satisfied?

If yes, check box	If yes, were you... Satisfied	Not Satisfied
☐ Someone to talk to in your primary language	☐	☐
☐ Explanations about your mortgage	☐	☐
☐ Translated documents	☐	☐

42. Did you apply for a loan modification?

☐ Yes ☐ No

43. Which <u>one</u> of the following actions, if any, was taken to address your most recent payment difficulties?

- ☐ Modified the existing loan
- ☐ Refinanced with a special government program (e.g. HARP, FHA short refi)
- ☐ Other refinance
- ☐ Sold home at reduced price agreed to by lender (short sale)
- ☐ Sold home – regular sale
- ☐ Returned home to lender to cancel mortgage debt (deed-in-lieu, mortgage release, "cash for keys")
- ☐ Home was taken in foreclosure
- ☐ Other (specify) _____
- ☐ None of the above

Draft

44. Overall, how satisfied were you with the loan servicer during the most recent difficulties making payments?

☐ Very ☐ Somewhat ☐ Not at all

45. Were any of the following a challenge to you in getting help to address your most recent payment difficulties?

	Yes	No
Understanding all the options available to me	☐	☐
Not knowing how or where to apply for programs	☐	☐
The application process for programs was too much trouble	☐	☐
Did not think I qualified for any program	☐	☐
Did not feel comfortable talking with the loan servicer	☐	☐
Was told I did not qualify for a program	☐	☐
Turned down for the programs I applied to	☐	☐
Difficulty getting the correct documents submitted in a timely fashion	☐	☐
Loan servicer was unable or unwilling to help me	☐	☐
Loan servicer and I had difficulty working together	☐	☐
Other problem (specify)_____ _____	☐	☐

46. Did you seek input about possible steps to address your payment difficulties from…

	Yes	No
A real estate agent	☐	☐
Family or friends	☐	☐
Lawyer	☐	☐
Financial planner	☐	☐
Bank or credit union	☐	☐
Other (specify) _____ _____	☐	☐

47. Did you pay someone who promised to resolve your difficulties, but then did not?

☐ Yes ☐ No

The Mortgage Today

48. Do you still have this mortgage today? *Answer no if you modified, refinanced, paid off the loan, sold or no longer have the property.*

☐ Yes
☐ No → **Skip to 56 on page 6**

49. Is the amount you owe on this mortgage today…

☐ Significantly less than your property value
☐ Slightly less than your property value
☐ About the same as your property value
☐ Slightly more than your property value
☐ Significantly more than your property value

50. How likely is it that in the next couple of years you will…

	Very	Somewhat	Not At All
Sell this property	☐	☐	☐
Move but keep this property	☐	☐	☐
Refinance the mortgage on this property	☐	☐	☐
Pay off this mortgage and own the property mortgage-free	☐	☐	☐
Lose the property because you cannot afford the payment	☐	☐	☐

51. At any time in the last few years, did you consider refinancing this loan?

☐ Yes
☐ No → **Skip to 55 on page 6**

52. In considering refinancing, did you ask for a quote from a mortgage lender/broker?

☐ Yes ☐ No

53. Did you apply for a refinance?

☐ Yes
☐ No → **Skip to 55 on page 6**

54. What was the outcome of this application?

☐ Application was denied
☐ Application was accepted but decided not to refinance
☐ Withdrew the application before the loan was processed

55. Were any of the following a reason you did not refinance this loan?

	Yes	No
New loans available were not better than what I already had	☐	☐
Possible savings not worth the cost or hassle to refinance	☐	☐
Home value/appraisal too low to qualify for a good refinance	☐	☐
Low credit score or other credit issues	☐	☐
Too much other debt	☐	☐
Insufficient income to qualify	☐	☐
Could not document income	☐	☐
Did not think I would qualify for a good refinance	☐	☐
Incomplete mortgage application	☐	☐
Other (specify) _____	☐	☐

→ **Skip to 67 on page 7**

No Longer Have The Mortgage

56. If you indicated in question 48 you no longer have this mortgage, when did you pay off, refinance, or otherwise end this mortgage?

_____ / _____
month year

57. What happened to this mortgage and/or property?

- ☐ Modified the loan
- ☐ Refinanced the loan
- ☐ Paid off the loan and kept the property
- ☐ Sold the property
- ☐ Property was taken as part of foreclosure (couldn't make payments)
- ☐ Decided to walk away and let the lender have the property

→ **Skip to 60**

58. Did you modify or refinance this loan…

- ☐ With the same lender
- ☐ With a new lender

59. How did the terms of the new loan compare to the old loan?

	Higher	Same	Lower
Interest rate	☐	☐	☐
Principal balance	☐	☐	☐
Monthly payments	☐	☐	☐

60. Were any of the following a reason you no longer have this mortgage?

	Yes	No
Could not afford to make the payments	☐	☐
Found a lower interest rate	☐	☐
Divorce or separation	☐	☐
Death of a household member	☐	☐
Illness or disability	☐	☐
Wanted to rent rather than own a home	☐	☐
House maintenance too difficult or costly	☐	☐
Wanted a different house	☐	☐
Moved to be closer to family/partner/spouse	☐	☐
Owed more on the loan than the property was worth or could sell it for	☐	☐
Other (specify) _____ _____	☐	☐

61. Considering the decision to end the mortgage, would you say the decision was…

- ☐ Your or your family's decision
- ☐ An action taken by someone else (lender or servicer)

62. Did you purchase or co-sign for any other property around the time of this loan transaction?

- ☐ Yes
- ☐ No → **Skip to 64**

63. Do you use this new property as your primary residence?

- ☐ Yes → **Skip to 67 on page 7**
- ☐ No

64. Do you currently own or rent your primary residence?

- ☐ Own → **Skip to 67 on page 7**
- ☐ Rent
- ☐ Live with family and help with expenses
- ☐ Live rent free with family or friends

65. When do you think you might purchase another primary residence?

- ☐ 1 – 2 years
- ☐ 3 – 5 years
- ☐ Over 5 years
- ☐ Never

Draft

66. Would any of the following events cause you to consider or not consider buying sooner or at all?

	Yes	No
Increase in income/more hours at work	☐	☐
Improved credit score	☐	☐
Improved health	☐	☐
Paying off other debts first	☐	☐
Saving more for a down payment	☐	☐
Decrease in interest rate	☐	☐
Decrease in required credit score	☐	☐
Other (specify)_____ _____	☐	☐

☐ Nothing, will not buy again

Your Household

67. What is your current marital status?

☐ Married
☐ Separated
☐ Never married
☐ Divorced
☐ Widowed

68. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

☐ Yes ☐ No

Please answer the following questions for you and your spouse or partner, if applicable.

	You	Spouse/ Partner
69. Age at last birthday:	_____ years	_____ years

70. Sex:

	You	Spouse/ Partner
Male	☐	☐
Female	☐	☐

71. Highest level of education achieved:

	You	Spouse/ Partner
Some schooling	☐	☐
High school graduate	☐	☐
Technical school	☐	☐
Some college	☐	☐
College graduate	☐	☐
Postgraduate studies	☐	☐

72. Hispanic or Latino:

	You	Spouse/ Partner
Yes	☐	☐
No	☐	☐

73. Race: *Mark all that apply.*

	You	Spouse/ Partner
White	☐	☐
Black or African American	☐	☐
American Indian or Alaska Native	☐	☐
Asian	☐	☐
Native Hawaiian or Pacific Islander	☐	☐

74. Current work status: *Mark all that apply.*

	You	Spouse/ Partner
Self-employed full time	☐	☐
Self-employed part time	☐	☐
Employed full time	☐	☐
Employed part time	☐	☐
Retired	☐	☐
Unemployed, temporarily laid-off or on leave	☐	☐
Not working for pay *(student, homemaker, disabled)*	☐	☐

75. Ever serve on active duty in the U.S. Armed Forces, Reserves or National Guard?

	You	Spouse/ Partner
Never served in the military	☐	☐
Only on active duty for training in the Reserves or National Guard	☐	☐
Now on active duty	☐	☐
Active duty in the past, but not now	☐	☐

76. Besides you (and your spouse/partner) who else lives in your household? *Mark all that apply.*

☐ Children/grandchildren under age 18
☐ Children/grandchildren age 18 – 22
☐ Children/grandchildren age 23 or older
☐ Parents of you or your spouse or partner
☐ Other relatives like siblings or cousins
☐ Non-relatives

☐ No one else

Draft

77. **Do you speak a language <u>other than English</u> at home?**

- ☐ Yes
- ☐ No → **Skip to 79**

78. **How well do you speak English?**

- ☐ Very well
- ☐ Well
- ☐ Not well
- ☐ Not at all

79. **Approximately how much is your total annual household income from all sources?** *Wages, salaries, tips, interest, child support, investment income, retirement, social security, and alimony.*

- ☐ Less than $35,000
- ☐ $35,000 to $49,999
- ☐ $50,000 to $74,999
- ☐ $75,000 to $99,999
- ☐ $100,000 to $174,999
- ☐ $175,000 or more

80. **How does this total annual household income compare to what it is in a "normal" year?**

- ☐ Higher than normal
- ☐ Normal
- ☐ Lower than normal

81. **Does your total annual household income include any of the following sources?**

	Yes	No
Wages or salary	☐	☐
Business or self-employment	☐	☐
Interest or dividends	☐	☐
Alimony or child support	☐	☐
Social Security, pension or other retirement benefits	☐	☐

82. **Which <u>one</u> of the following best describes how your household's income changes from month to month, if at all?**

- ☐ Roughly the same amount each month
- ☐ Roughly the same most months, but some unusually high or low months during the year
- ☐ Often varies quite a bit from one month to the next

83. **Does anyone in your household have any of the following?**

	Yes	No
401(k), 403(b), IRA, or pension plan	☐	☐
Stocks, bonds, or mutual funds (*not in retirement accounts or pension plans*)	☐	☐
Certificates of deposit	☐	☐
Investment real estate	☐	☐

84. **Which <u>one</u> of the following statements best describes the amount of financial risk you are willing to take when you save or make investments?**

- ☐ Take substantial risks expecting to earn substantial returns
- ☐ Take above-average risks expecting to earn above-average returns
- ☐ Take average risks expecting to earn average returns
- ☐ Not willing to take any financial risks

85. **How well could you explain to someone the...**

	Very	Somewhat	Not At All
Process of taking out a mortgage	☐	☐	☐
Difference between a fixed- and an adjustable-rate mortgage	☐	☐	☐
Difference between a prime and a subprime loan	☐	☐	☐
Difference between a mortgage's interest rate and its APR	☐	☐	☐
Amortization of a loan	☐	☐	☐
Consequences of not making required mortgage payments	☐	☐	☐
Difference between lender's and owner's title insurance	☐	☐	☐
Relationship between discount points and interest rate	☐	☐	☐
Reason payments into an escrow account can change	☐	☐	☐

Draft

86. Do you agree or disagree with the following statements?

	Agree	Disagree
Owning a home is a good financial investment	☐	☐
Most mortgage lenders generally treat borrowers well	☐	☐
Most mortgage lenders would offer me roughly the same rates and fees	☐	☐
Late payments will lower my credit rating	☐	☐
Lenders shouldn't care about any late payments, only whether loans are fully repaid	☐	☐
It is okay to default or stop making mortgage payments if it is in the borrower's financial interest	☐	☐

87. Do you know anyone who…

	Yes	No
Is behind in making their mortgage payments	☐	☐
Has gone through foreclosure where the lender took over the property	☐	☐
Stopped making monthly mortgage payments, even if they could afford it, because they owed more than the property was worth	☐	☐

88. In the last couple of years, have any of the following happened to you?

	Yes	No
Separated, divorced, or partner left	☐	☐
Married, remarried, or new partner	☐	☐
Death of household member	☐	☐
Addition to your household (not including spouse/partner)	☐	☐
Person leaving your household (not including spouse/partner)	☐	☐
Disability or serious illness of a household member	☐	☐
Disaster affecting a property you own	☐	☐
Disaster affecting your (or your spouse/partner's) work	☐	☐
Moved within the area (less than 50 miles)	☐	☐
Moved to a new area (50 miles or more)	☐	☐

89. In the last couple of years, have any of the following happened to you (or your spouse/partner)?

	Yes	No
Layoff, unemployment, or reduced hours	☐	☐
Retirement	☐	☐
Promotion	☐	☐
Started a new job	☐	☐
Started a second job	☐	☐
Business failure	☐	☐
A personal financial crisis	☐	☐

90. In the last couple of years, how have the following changed for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

91. In the next couple of years, how do you expect the following to change for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

92. How likely is it in the next couple of years you (or your spouse/partner) will face…

	Very	Somewhat	Not At All
Retirement	☐	☐	☐
Difficulty making your mortgage payments	☐	☐	☐
A layoff, unemployment, or forced reduction in hours	☐	☐	☐
Some other personal financial crisis	☐	☐	☐

93. If your household faced an unexpected personal financial crisis in the next couple of years, how likely is it you could…

	Very	Somewhat	Not At All
Pay your bills for three months without borrowing	☐	☐	☐
Get significant financial help from family or friends	☐	☐	☐
Borrow a significant amount from a bank or credit union	☐	☐	☐
Significantly increase your income	☐	☐	☐

Draft

The Federal Housing Finance Agency and the Consumer Financial Protection Bureau appreciate your assistance.

If you wish to add comments or further explain any of your answers, please do that here.
Please do not put your name or address on the questionnaire.

Please use the enclosed business-reply envelope to return your completed questionnaire.

FHFA
1600 Research Blvd, RC B16
Rockville, MD 20850

For any questions about the survey or online access you can call toll free 1-855-531-0724.

Draft

[FR Doc. 2019–11182 Filed 5–28–19; 8:45 am]
BILLING CODE 8070–01–C

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 24, 2019.

TIME AND DATE: 10:00 a.m., Wednesday, June 5, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *McNary* v. *Alcoa World Alumina, LLC,* Docket No. CENT 2015–279–DM. (Issues include whether the Judge erred by determining that the complainant had failed to establish interference with his rights under the Mine Act.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD, Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–11255 Filed 5–24–19; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 24, 2019.

TIME AND DATE: 10:00 a.m., Tuesday, June 4, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *McNary* v. *Alcoa World Alumina, LLC,* Docket No. CENT 2015–279–DM. (Issues include whether the Judge erred by determining that the complainant had failed to establish interference with his rights under the Mine Act.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD, Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769, Passcode: 678–100

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–11257 Filed 5–24–19; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 6, 2019.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Bill Voss, Joshua Falciani, both of Decatur, Alabama, and Slap Happy Investments, LLC, Athens, Alabama;* to retain voting shares of Merit Holdings LLC and thereby indirectly retain shares of Merit Bank, both of Huntsville, Alabama, and to join the Organizing Control Group, which controls Merit Holdings LLC.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Thomas Creighton, Jr., Denver, Colorado, individually and as trustee of High Plains Banking Group, Inc. KSOP;* to acquire voting shares of High Plains Banking Group, Inc., and thereby indirectly acquire shares of High Plains Bank, both of Flagler, Colorado. In addition, Heidi Priebe, Fort Collins, Colorado; Debra Dunbar, Gunnison, Colorado; Michael Patton, Scott City, Kansas; Frances Geutlich, Sammamish, Washington; Emma Creighton, Grace Creighton, Joseph Creighton, all of Longmont, Colorado; and William Newton, Snowmass, Colorado, to be approved as members of the Creighton Family Group, which controls High Plains Banking Group, Inc.

C. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *The BP & RP Trust; Deana Rae Gillespie, individually and as Successor Trustee of the BP & RP Trust, Muskego, Wisconsin; Ryan James Gillespie, Muskego, Wisconsin; Bruce R. Penoske and Raelynn Penoske, individually and as Trustees of the BP & RP Trust, both of Washington, Utah; Jared P. Goodale, Brentwood, California; and Myles Goodale, Boise, Idaho;* to retain voting shares of Community Bancshares, Inc., and thereby indirectly retain voting shares of Community Bank, both of Joseph, Oregon.

Board of Governors of the Federal Reserve System, May 22, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–11113 Filed 5–28–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice of information collection; request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements in its regulation ''Duties of Furnishers of Information to Consumer Reporting Agencies'' (''Information Furnishers Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the furnisher provisions (subpart E) of the CFPB's Regulation V

regarding other entities. The existing clearance expires on June 30, 2016.

DATES: Comments must be submitted on or before June 28, 2019.

ADDRESSES: Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

Electronic: Write ''Information Furnishers Rule, PRA Comment, P135407,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form.

Email: MBX.OMB.OIRA.Submission@OMB.eop.gov.

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jamie Elliott Hine, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2188, 600 Pennsylvania Ave. NW, CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FTC has submitted to the Office of Management and Budget (''OMB'') this request for extension of the previously approved collection of information discussed below.

Title: Duties of Furnishers of Information to Consumer Reporting Agencies.

OMB Control Number: 3084–0144.

Type of Review: Extension of currently approved collection.

Estimated Annual Burden:

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule: 14,420 hours and $815,884 in associated labor costs

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule: 2,635 hours and $62,423 in associated labor costs

The total estimated burden is 17,055 hours and $878,307 in associated labor costs. Commission staff believes that the Information Furnishers Rule and subpart E of Regulation V impose negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (*e.g.,* offices and computers) for the associated information collection provisions.

These burden figures reflect solely the FTC's estimates assigned to itself, including a portion reflective of its sole enforcement authority for certain motor vehicle dealers subject to the FTC rule.[1] For more details about the Rule requirements, the background behind these information collection provisions, and the basis for these calculations, see 84 FR 10074 (March 19, 2019).

Request for Comment

On March 19, 2019, the Commission sought comment on the information collection requirements associated with the Information Furnishers Rule and the Commission's shared enforcement with the CFPB of the furnisher provisions in subpart E of the CFPB's Regulation V. 84 FR 10074. No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone'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, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2019–11194 Filed 5–28–19; 8:45 am]

BILLING CODE 6750–01–P

[1] The FTC retains rulemaking authority for its Information Furnishers Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)) that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4131]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Adverse Event Reports; Electronic Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 28, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0645. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. FDA Adverse Event Reports; Electronic Submissions—21 CFR 310.305, 314.80, 314.98, 314.540, 329.100, 514.80, 600.80, 1271.350, and Part 803 OMB Control Number 0910–0645—Extension

I. Background

The Safety Reporting Portal (SRP) and the Electronic Submission Gateway (ESG) are the Agency's electronic systems for collecting, submitting, and processing adverse event reports, product problem reports, and other safety information for FDA-regulated products. To ensure the safety and identify any risks, harms, or other

dangers to health for all FDA-regulated human and animal products, the Agency needs to be informed whenever an adverse event, product quality problem, or product use error occurs. This risk identification process is the first necessary step that allows the Agency to gather the information necessary to be able to evaluate the risk associated with the product and take whatever action is necessary to mitigate or eliminate the public's exposure to the risk.

Some adverse event reports are required to be submitted to FDA (mandatory reporting) and some adverse event reports are submitted voluntarily (voluntary reporting). Requirements regarding mandatory reporting of adverse events or product problems have been codified in 21 CFR parts 310, 314, 329, 514, 600, 803, and 1271, specifically §§ 310.305, 314.80, 314.98, 314.540, 329.100, 514.80, 600.80, 803.30, 803.40, 803.50, 803.53, 803.56, and 1271.350(a) (21 CFR 310.305, 314.80, 314.98, 314.540, 329.100, 514.80, 600.80, 803.30, 803.40, 803.50, 803.53, 803.56, and 1271.350(a)). While adverse event reports submitted to FDA in paper format using Forms FDA 3500, 3500A, 1932, and 1932a are approved under OMB control numbers 0910–0284 and 0910–0291, this notice solicits comments on adverse event reports filed electronically via the SRP and the ESG, and currently approved under OMB control number 0910–0645.

II. The FDA Safety Reporting Portal Rational Questionnaires

FDA currently has OMB approval to receive several types of adverse event reports electronically via the SRP using rational questionnaires. In this notice, FDA seeks comments on the extension of OMB approval for the following rational questionnaires and the proposed revision of the existing rational questionnaire for tobacco products.

A. Reportable Food Registry Reports

The Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–085) (FDAAA) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by creating section 417 (21 U.S.C. 350f), Reportable Food Registry (RFR). Section 417 of the FD&C Act defines ''reportable food'' as an article of food (other than infant formula or dietary supplements) for which there is a ''reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals.'' (See section 417(a)(2) of the FD&C Act.) We designed the RFR report rational questionnaire to enable us to quickly identify, track, and remove from commerce an article of food (other than infant formula and dietary supplements) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA's Center for Food Safety and Applied Nutrition uses the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses. The data elements for RFR reports remain unchanged in this request for extension of OMB approval.

B. Reports Concerning Experience With Approved New Animal Drugs

Section 512(l) of the FD&C Act (21 U.S.C. 360b(l)) and § 514.80(b) of FDA's regulations (21 CFR 514.80(b)) require applicants of approved new animal drug applications (NADAs) and approved abbreviated new animal drug applications (ANADAs) to report adverse drug experiences and product/manufacturing defects to the Center for Veterinary Medicine (CVM). This continuous monitoring of approved NADAs and ANADAs affords the primary means by which we obtain information regarding potential problems with the safety and efficacy of marketed approved new animal drugs as well as potential product/manufacturing problems. Postapproval marketing surveillance is important because data previously submitted to FDA may no longer be adequate, as animal drug effects can change over time and less apparent effects may take years to manifest.

To report adverse drug experiences and product/manufacturing defects using the Agency's paper forms, respondents are required to use Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Material for New Animal Drugs'' (see § 514.80(d)). Form FDA 1932a, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness or Product Defect Report,'' allows for voluntary reporting of adverse drug experiences or product/manufacturing defects by veterinarians and the general public. Collection of information using existing paper Forms FDA 2301, 1932, and 1932a is approved under OMB control number 0910–0284.

Alternatively, however, we encourage respondents to report adverse drug experiences and product/manufacturing defects electronically. The electronic submission data elements to report adverse drug experiences and product/manufacturing defects electronically remain unchanged in this request for extension of OMB approval.

C. Animal Food Adverse Event and Product Problem Reports

Section 1002(b) of FDAAA directed the Secretary of Health and Human Resources to establish an early warning and surveillance system to identify adulteration of the pet food supply and outbreaks of illness associated with pet food. We developed the Pet Food Early Warning System rational questionnaire as a user-friendly data collection tool, as well as a questionnaire for collecting voluntary adverse event reports associated with livestock food. Information collected in these voluntary adverse event reports contribute to CVM's ability to identify adulteration of the livestock food supply and outbreaks of illness associated with livestock food. We use the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses. The electronic submission data elements to report adverse events associated with animal food remain unchanged since last OMB review.

D. Voluntary Tobacco Product Adverse Event and Product Problem Reports

Section 909(a) of the FD&C Act (21 U.S.C. 387i(a)) authorizes FDA to establish regulations with respect to mandatory adverse event reports associated with the use of a tobacco product. We collect voluntary adverse event reports associated with the use of tobacco products from interested parties such as healthcare providers, researchers, consumers, and other users of tobacco products. Information collected in voluntary adverse event reports contributes to FDA's Center for Tobacco Products (CTP's) ability to be informed of, and assess the real consequences of, tobacco product use.

The need for this collection of information derives from our responsibility to obtain current, timely, and policy-relevant information to carry out our statutory functions. CTP has been receiving adverse event and product problem reports through the SRP since January 2014. CTP has developed two voluntary rational questionnaires on the SRP. The first is utilized by consumers and concerned citizens to report tobacco product adverse event or product problems. A second rational questionnaire is used by tobacco product investigators in clinical

trials with investigational tobacco products. Both CTP voluntary rational questionnaires capture tobacco-specific adverse event and product problem information from reporting entities such as healthcare providers, researchers, consumers, and other users of tobacco products.

E. Dietary Supplement Adverse Event Reports

The Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Pub. L. 109–462, 120 Stat. 3469) amended the FD&C Act with respect to serious adverse event reporting and recordkeeping for dietary supplements and nonprescription drugs marketed without an approved application.

Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa–1(b)(1)) requires the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1)) appears on the label of a dietary supplement marketed in the United States to submit to FDA all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch form (Form FDA 3500A) when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report.

As required by section 3(d)(3) of the DSNDCPA, FDA issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. The guidance document entitled ''Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act,'' discusses how, when, and where to submit serious adverse event reports for dietary supplements and followup reports. The guidance also provides FDA's recommendation on records maintenance and access for serious and non-serious adverse event reports and related documents.

Reporting of serious adverse events for dietary supplements to FDA serves as an early warning sign of potential public health issues associated with such products. Without notification of all serious adverse events associated with dietary supplements, FDA would be unable to investigate and followup promptly, which in turn could cause delays in alerting the public when safety problems are found. In addition, the information received provides a reliable mechanism to track patterns of adulteration in food that supports efforts by FDA to target limited inspection resources to protect the public health. FDA uses the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses.

Paper mandatory dietary supplement adverse event reports are submitted to FDA on the MedWatch form, Form FDA 3500A, and paper voluntary reports are submitted on Form FDA 3500. Forms FDA 3500 and 3500A are available as fillable pdf forms. Dietary supplement adverse event reports may be electronically submitted to the Agency via the SRP. This method of submission is voluntary. A manufacturer, packer, or distributor of a dietary supplement who is unable to or chooses not to submit reports using the electronic system will still be able to provide their information by paper MedWatch form, Form FDA 3500A (by mail or Fax). There is no change to the mandatory information previously required on the MedWatch form. The electronic submission data elements to report adverse events associated with dietary supplement products remain unchanged in this request for extension of OMB approval.

F. Food, Infant Formula, and Cosmetic Adverse Event Reports

Rational questionnaires have also been developed for submitting adverse event reports for food, infant formula, and cosmetics. The electronic submission data elements to report adverse events associated with food, infant formula, and cosmetics products remain unchanged in this request for extension of OMB approval.

In the **Federal Register** of November 30, 2018 (83 FR 61653), we published a 60-day notice requesting public comment on the proposed collection of information. One general comment was received suggesting the associated forms could be improved but did not include specific problems that might have been encountered. We are appreciative of this comment and continually seek ways to improve the electronic reporting of adverse events associated with FDA-regulated products.

III. Information Collection Burden Estimate

Description of respondents: The respondents to this collection of information include all persons submitting mandatory or voluntary adverse event reports electronically to FDA via the ESG or the SRP regarding FDA-regulated products.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	FDA Form number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Voluntary Adverse Event Report via the SRP (Other than RFR Reports)	3800	1,800	1	1,800	0.6	1,080
Mandatory Adverse Event Report via the SRP (Other than RFR Reports)	3800	3,360	1	3,360	1	3,360
Mandatory Adverse Event Report via the ESG (Gateway-to-Gateway transmission)	3800	3,007,000	1	3,007,000	0.6	1,804,200
Mandatory and Voluntary RFR Reports via the SRP	3800	1,260	1	1,260	0.6	756
Total						1,809,396

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

* 36 minutes.

Our estimate of the number of respondents and the total annual responses in table 1, Estimated Annual Reporting Burden, is based primarily on mandatory and voluntary adverse event reports electronically submitted to the Agency. The estimated total annual responses are based on initial reports. Followup reports, if any, are not counted as new reports. Based on our experience with adverse event reporting, we assume it takes respondents 0.6 hour to submit a voluntary adverse event report via the SRP, 1 hour to submit a mandatory adverse event report via the SRP, and 0.6 hour to submit a mandatory adverse event report via the ESG (gateway-to-gateway transmission). Both mandatory and voluntary RFR reports must be submitted via the SRP. We assume it takes respondents 0.6 hour to submit an RFR report, whether the submission is mandatory or voluntary.

The burden hours required to complete paper FDA reporting forms (Forms FDA 3500, 3500A, 1932, and 1932a) are reported under OMB control numbers 0910–0284 and 0910–0291. While we do not charge for the use of the ESG, we require respondents to obtain a public key infrastructure certificate in order to set up the account. This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 year to 3 years. The certificate typically costs from $20 to $30.

Our estimated burden for the information collection reflects an overall increase of 688,547 hours and a corresponding increase of 1,145,763 responses. We attribute this adjustment to an increase in the number of submissions we have received over the last few years.

Dated: May 22, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11074 Filed 5–28–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes; Tribal Management Grant Program

Announcement Type: New and Competing Continuation.

Funding Announcement Number: HHS–2019–IHS–TMD–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.228.

Key Dates

Application Deadline Date: July 1, 2019.

Earliest Anticipated Start Date: August 1, 2019.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) Office of Direct Service and Contracting Tribes (ODSCT), is accepting applications for grants for the Tribal Management Grant (TMG) Program. This program is authorized under: 25 U.S.C. 5322(b)(2) and 25 U.S.C. 5322(e) of the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638, as amended. This program is described in the Assistance Listings located at *https://beta.sam.gov* (formerly known as Catalog of Federal Domestic Assistance) under 93.228.

Background

The TMG Program is a competitive grant program that is capacity building and developmental in nature and has been available for federally recognized Indian Tribes and Tribal Organizations (T/TOs) since shortly after enactment of the ISDEAA in 1975. The TMG Program was established to assist T/TOs to prepare for assuming all or part of existing IHS programs, functions, services, and activities (PFSAs) and further develop and improve Tribal health management capabilities. The TMG Program provides competitive grants to T/TOs to establish goals and performance measures for current health programs; assess current management capacity to determine if new components are appropriate; analyze programs to determine if a T/TO's management is practicable; and develop infrastructure systems to manage or organize PFSAs.

Purpose

The purpose of this IHS grant program is to enhance and develop health management infrastructure and assist T/TOs in assuming all or part of existing IHS PFSAs through a Title I ISDEAA contract and assist established Title I ISDEAA contractors and Title V ISDEAA compactors to further develop and improve management capability. In addition, Tribal Management Grants are available to T/TOs under the authority of 25 U.S.C. 5322(e) for the following: (1) Obtaining technical assistance from providers designated by the Tribe/Tribal Organization (including T/TOs that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and (2) planning, designing, monitoring, and evaluating Federal programs serving T/TOs, including Federal administrative functions.

II. Award Information

Funding Instrument

Grant.

Estimated Funds Available

The total funding identified for fiscal year (FY) 2019 is approximately $2,465,000. Individual award amounts for the first budget year are anticipated to be between $50,000 and $150,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 12–14 awards will be issued under this program announcement.

Period of Performance

The Tribal Management Grant (TMG Project) period of performance vary based on the project type selected. Period of performance could run from 1 to 3 years. Please refer to ''Eligible TMG Project Types, Maximum Funding Levels, and Periods of Performance,'' for additional details.

III. Eligibility Information

1. Eligibility

''Indian Tribes'' and ''Tribal Organizations'' (T/TOs) as defined by the ISDEAA are eligible to apply for the TMG Program. The definitions for each entity type are outlined below. Only one application per Tribe/Tribal organization is allowed.

- An Indian Tribe as defined by 25 U.S.C. 5304(e). The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 5304(*l*). The term ''tribal organization'' means the recognized

governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

Eligible TMG Project Types, Maximum Funding Levels, and Project Periods: The TMG Program consists of four project types: (1) Feasibility study; (2) planning; (3) evaluation study; and (4) health management structure. Applicants may submit applications for one project type only. An application must state the project type selected. Any application that addresses more than one project type will be considered ineligible and will not be reviewed. The maximum funding levels noted must include both direct and indirect costs. Application budgets may not exceed the maximum funding level or period of performance identified for a project type. Any application with a budget or period of performance that exceeds the maximum funding level or period of performance will be considered ineligible and will not be reviewed. Please refer to Section IV.5, ''Funding Restrictions,'' for further information regarding ineligible project activities.

1. FEASIBILITY STUDY (Maximum funding/project period: $70,000/12 months).

A feasibility study must include a study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present the planned approach, training, and resources required to assume Tribal management of the program. The study must include the following four components:

- Health needs and health care service assessments that identify existing health care services and delivery systems, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.
- Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.
- Financial analysis of historical trends data, financial projections, and new resource requirements for program management costs and analysis of potential revenues from federal/non-federal sources.
- Decision statement/report that incorporates findings; conclusions; and recommendations; the presentation of the study and recommendations to the Tribal governing body for determination regarding whether Tribal program assumption is desirable or warranted.

2. PLANNING (Maximum funding/ project period: $50,000/12 months).

Planning projects involve data collection to establish goals and performance measures for health programs operation or anticipated PFSAs under a Title I contract. Planning projects will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health priorities of the T/TO. For example, planning projects could include the development of a Tribe-specific health plan or a strategic health plan, etc. Please note that updated Healthy People information and Healthy People 2020 objectives are available in electronic format at the following website: *http://www.health.gov/healthypeople/publications.* The United States (U.S.) Public Health Service (PHS) encourages applicants submitting strategic health plans to address specific objectives of Healthy People 2020.

3. EVALUATION STUDY (Maximum funding/project period: $50,000/12 months).

An evaluation study must include a systematic collection, analysis, and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures, or programs regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a T/TO's program operations (*i.e.,* direct services, financial management, personnel, data collection and analysis, third-party billing, etc.), as well as to determine the appropriateness of new components of a T/TO's program operations that will assist efforts to improve Tribal health care delivery systems.

4. HEALTH MANAGEMENT STRUCTURE (Average funding/project period: $100,000/12 months; maximum funding/project period: $300,000/36 months).

The first year maximum funding level is limited to $150,000 for multi-year projects. The Health Management Structure component allows for implementation of systems to manage or organize PFSAs. Management structures include health department organizations, health boards, and financial management systems, including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvement, and correction of management systems that address weaknesses identified through quality control measures, internal control reviews, and audit report findings under required financial audits and ISDEAA requirements.

For the minimum standards for the management systems used by a T/TO when carrying out Self-Determination contracts, please see 25 CFR part 900, Contracts Under the Indian Self-Determination and Education Assistance Act, Subpart F—''Standards for Tribal or Tribal Organization Management Systems,'' §§ 900.35–900.60. For operational provisions applicable to carrying out Self-Governance compacts, please see 42 CFR part 137, Tribal Self-Governance, Subpart I,—''Operational Provisions,'' §§ 137.160–137.220.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under II. Award Information, Estimated Funds Available, or exceed the period of performance outlined under II. Award Information, Period of Performance will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

A. Tribal Organizations applying for technical assistance and/or training grants must provide written notice that the Tribal Organization is applying upon the request of the Indian Tribe and/or Tribes it intends to serve.

B. Documentation for Priority I participation requires a copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of recognized Tribal status within the past 5 years. The date on the documentation must reflect that

federal recognition was received during or after March 2014.

C. Documentation for Priority II participation requires a copy of the most current transmittal letter and Attachment A from the Department of Health and Human Services (HHS), Office of Inspector General (OIG), National External Audit Review Center (NEAR). See ''Funding Priorities'' for more information. If an applicant is unable to provide a copy of the most recent transmittal letter or needs assistance with audit issues; information or technical assistance may be obtained by contacting the IHS Office of Finance and Accounting, Division of Audit by telephone at (301) 443–1270, or toll-free at the NEAR help line at (800) 732–0679 or (816) 426–7720. Recognized Indian Tribes or Tribal Organizations not subject to Single Audit Act requirements must provide a financial statement identifying the federal dollars received in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR part 900, subpart F—''Standards for Tribal or Tribal Organization Management Systems.''

D. Documentation of Consortium participation—If an applicant is a member of an eligible intertribal consortium, the Tribe must:

—Identify the consortium.
—Indicate if any of the consortium member Tribes intend to submit a TMG application.
—Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.
—Identify all consortium member Tribes.
—Identify if any of the consortium member Tribes intend to submit a TMG application of their own.
—Demonstrate that the consortium's application does not duplicate or overlap any objectives of other consortium members who may be submitting their own TMG application.

Funding Priorities: The IHS has established the following funding priorities for TMG awards:

• *PRIORITY I*—Any Indian Tribe, or Tribal Organization representing that Indian Tribe, that has received federal recognition (including restored, funded, or unfunded) within the past 5 years, specifically received during or after March 2014, will be considered Priority I.

• *PRIORITY II*—T/TOs submitting a new application or a competing continuation application for the sole purpose of addressing audit material weaknesses will be considered Priority II.

Priority II participation is only applicable to the Health Management Structure project type. For more information, see ''Eligible TMG Project Types, Maximum Funding Levels, and Project Periods,'' in Section II.

• *PRIORITY III*—Eligible Direct Service and T/TOs with a Title I ISDEAA contract with the IHS submitting a new application or a competing continuation application will be considered Priority III.

• *PRIORITY IV*—Eligible T/TOs with a Title V ISDEAA compact with the IHS submitting a new application or a competing continuation application will be considered Priority IV.

The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Priority III applicants will be funded before approved Priority IV applicants. Funds will be distributed until depleted.

The following definitions are applicable to the PRIORITY II category:

Audit finding—deficiencies that the auditor is required by 45 CFR 75.516, to report in the schedule of findings and questioned costs.

Material weakness—''Statements on Auditing Standards 115'' defines material weakness as a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Significant deficiency—''Statements on Auditing Standards 115,'' defines significant deficiency as a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

The audit findings are identified in Attachment A of the transmittal letter received from the HHS/OIG/NEAR. Please identify the material weaknesses to be addressed by underlining the item(s) listed in Attachment A.

Tribes and Tribal Organizations not subject to Single Audit Act requirements must provide a financial statement identifying the federal dollars received in the footnotes. The financial statement should also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR part 900, ''Subpart F, ''Standards for Tribal and Tribal Organization Management Systems.''

Note: A decision to award a TMG does not represent a determination from the IHS regarding the T/TO's eligibility to contract for a specific PFSA under the ISDEAA. An application for a TMG does not constitute a contract proposal.

Tribal Resolution

The DGM must receive an official, signed Tribal resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian T/TO that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a NoA will not be issued to that applicant and it will not receive IHS funds until it has submitted a signed resolution to the Grants Management Specialist listed in this funding announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit a current copy of the 501(c)(3) Certificate with the application.

V. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on *http://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

• Abstract (one page) summarizing the project.
• Application forms:
○ SF–424, Application for Federal Assistance.
○ SF–424A, Budget Information—Non-Construction Programs.
○ SF–424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 15 pages). See IV.2.A Project Narrative for instructions.
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.
- Budget Justification and Narrative (not to exceed 5 pages). See IV.2.B Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s).
- Letters of Support from organization's Board of Directors (if applicable).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable). Acceptable forms of documentation include:
  - Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. Applicants can find these on the FAC website: *https://harvester.census.gov/facdissem/Main.aspx.*

Public Policy Requirements

All federal public policies apply to IHS grants and cooperative agreements with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate document that is no more than 15 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; (4) and be formatted to fit standard letter paper (8-1/2 x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—2 Pages)

Section 1: Needs.

Describe how the T/TO has determined the need to either enhance or develop Tribal management capability to either assume PFSAs or not in the interest of Self-Determination. Note the progression of previous TMG projects/awards if applicable.

Part 2: Program Planning and Evaluation (Limit—11 Pages)

Section 1: Program Plans.

Describe fully and clearly the direction the T/TO plans to take with the selected TMG Project type in addressing their health management infrastructure, including how the T/TO's plans to demonstrate improved health and services to the community or communities it serves. Include proposed timelines.

Section 2: Program Evaluation.

Describe fully and clearly the improvements that will be made by the T/TO that will impact their management capability or prepare them for future improvements to their organization that will allow them to manage their health care system and identify the anticipated or expected benefits for the Tribe.

Part 3: Program Report (Limit—2 Pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past five years associated with the goals of this announcement.

Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the past five years.

Please identify and summarize recent significant health related project activities of the work done during the project period.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line of the budget. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''other'' category is justified. For subsequent budget years, the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *http://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the

Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* The waiver must: (1) Be documented in writing (emails are acceptable), before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to DGM. Applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B, which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *http://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see SAM.gov for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the IHS Grants Management, Policy Topics website: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Weights assigned to each section are noted in parentheses. The 15-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (20 Points)

(1) Describe the T/TO's current health operation. Include a list of programs and services that are currently provided (*e.g.,* federally funded, State-funded, etc.), information regarding technologies currently used (*e.g.,* hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (*i.e.,* Tribal staff, Area office IHS, vendor, etc.). Include information regarding whether the T/TO has a health department and/or health board and how long it has been operating.

(2) Describe the population to be served by the proposed project. Include the total number of eligible IHS beneficiaries currently using the services.

(3) Describe the geographic location of the proposed project, including any geographic barriers to health care users in the area to be served.

(4) Identify all TMGs received since FY 2013, dates of funding, and a summary of project accomplishments. State how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

(5) Identify the eligible project type and priority group of the applicant.

(6) Explain the need or reason for the proposed TMG project. Identify specific weaknesses and gaps in service or infrastructure that will be addressed by the proposal. Explain how these gaps and weaknesses will be assessed.

(7) If the proposed TMG project includes information technology (*i.e.,* hardware, software, etc.), provide further information regarding measures that have occurred or will occur to ensure the proposed project will not

create other gaps in services or infrastructure (*e.g.,* negatively affect or impact IHS interface capability, Government Performance and Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.) if applicable.

(8) Describe the effect of the proposed TMG project on current programs (*e.g.,* federally-funded, state-funded, etc.), and if applicable, on current equipment (*e.g.,* hardware, software, services, etc.). Include the effect of the proposed project on planned or anticipated programs and equipment.

(9) Address how the proposed TMG project relates to the purpose of the TMG Program by addressing the appropriate description that follows:

- Identify whether the T/TO is an IHS Title I contractor. Address if the Self-Determination contract is a master contract of several programs or if individual contracts are used for each program. Include information regarding whether or not the T/TO participates in a consortium contract (*i.e.,* more than one Tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed TMG project will enhance the organization's capacity to manage the contracts currently in place.
- Identify if the T/TO is not an IHS Title I contractor. Address how the proposed TMG project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract and an anticipated date for contract.
- Identify if the T/TO is an IHS Title V compactor. Address when the T/TO entered into the compact and how the proposed project will further enhance the organization's management capabilities.

B. Project Objective(s), Work Plan and Approach (40 Points)

(1) The proposed project objectives must be:

- Measureable and (if applicable) quantifiable;
- results-oriented;
- time-limited.

Example: By installing new third-party billing software, the Tribe proposes to increase the number of claims processed by 15 percent within 12 months.

(2) For each objective address how the proposed TMG project will result in change or improvement in program operations or processes. Also address what tangible products are expected from the project (*i.e.,* policies and procedures manual, health plan, etc.)

(3) Address the extent to which the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population.

(4) Submit a work plan in the Appendix that includes the following:

- Provide action steps on a timeline for accomplishing the proposed project objectives.
- Identify who will perform the action steps.
- Identify who will supervise the action steps taken.
- Identify tangible products that will be produced during and at the end of the proposed project.
- Identify who will accept and/or approve work products during the duration of the proposed TMG project and at the end of the proposed project.
- Include a description of any training activities proposed. This description will identify the target audience and training personnel.
- Include work plan evaluation activities

(5) If consultants or contractors will be used during the proposed project, please complete the following information in their scope of work. (If consultants or contractors will not be used, please make note in this section):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered, including a timeline.

If potential consultants or contractors have already been identified, please include a resume for each consultant or contractor in the Appendix.

(6) Describe updates that will be required for the continued success of the proposed TMG project (*i.e.,* revision of policies/procedures, upgrades, technical support, etc.). Include a timeline of anticipated updates and source of funding to conduct the update and/or maintenance.

C. Program Evaluation (20 Points)

Each proposed objective requires an evaluation activity to assess its progression and ensure completion. This should be included in the work plan.

Describe the proposal's plan to evaluate project processes and outcomes. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

- The criteria for determining whether or not each objective was met.
- The data to be collected to determine whether the objective was met.
- Data collection intervals.
- Who will be responsible for collecting the data and their qualifications.
- Data analysis method.
- How the results will be used.

(2) For process evaluation, describe:

- The process for monitoring and assessing potential problems, then identifying quality improvements.
- Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications.
- Provide details with regards to the ways ongoing monitoring will be used to improve the project.
- Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How the T/TO will document what is learned throughout the project period.

(3) Describe any additional evaluation efforts planned after the grant period has ended.

(4) Describe the ultimate benefit to the T/TO that is expected to result from this project. An example would be a T/TO's ability to expand preventive health services because of increased billing and third-party payments.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

This section outlines the T/TO's capacity to complete the proposal outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for completion of the proposed plan.

(1) Provide the organizational structure of the T/TO.

(2) Provide information regarding plans to obtain management systems if a T/TO does not have an established management system currently in place that complies with 25 CFR part 900, subpart F, ''Standards for Tribal or Tribal Organization Management Systems.'' State if management systems are already in place and how long the systems have been in place.

(3) Describe the ability of the T/TO to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

(4) Describe equipment (*e.g.,* fax machine, telephone, computer, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

(5) List key project personnel and their titles in the work plan.

(6) Provide the position descriptions and resumes for all key personnel in the Appendix. The included position descriptions should: (1) Clearly describe each position's duties; and (2) indicate desired qualifications and project associated experience. Each resume must include a statement indicating that the proposed key personnel is explicitly qualified to carry out the proposed project activities. If no current candidate for a position exists please provide a statement to that effect in the Appendix.

(7) If an individual is partially funded by this grant, indicate the percentage of his or her time to be allocated to the project and identify the resources used to fund the remainder of that individual's salary.

(8) Address how the T/TO will sustain the proposal created positions after the grant expires. Please indicate if the project requires additional personnel (*i.e.,* IT support, etc.) If no additional personnel is required please indicate that in this section.

E. Categorical Budget and Budget Justification (5 Points)

(1) Provide a categorical budget for each of the 12-month budget periods requested.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the Appendix.

(3) Provide a narrative justification explaining why each categorical budget line item is necessary and relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*e.g.,* equipment specifications, etc.)

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS ODSCT within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Grants are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75, subpart F.

2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of

other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required select semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *https://pms.psc.gov.* The applicant is also requested to upload a copy of the FFR (SF–425) into our grants management system, GrantSolutions. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by federal agencies. The Transparency Act also includes a requirement for recipients of federal grants to report information about first-tier sub-awards and executive compensation under federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: (1) The period of performance start date was October 1, 2010 or after, and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at *http://www.ihs.gov/dgm/policytopics/.*

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *https://www.hhs.gov/ocr/about-us/contact-us/index.html* or call (800) 368–1019 or TDD (800) 537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following website: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf,* and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW, Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), at *http://www.fapiis.gov,* before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Mr. Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857. (Include ''Mandatory Grant Disclosures'' in subject line.)

Office: (301) 443–5204.

Fax: (301) 594–0899.

Email: Robert.Tarwater@ihs.gov.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201.

URL: https://oig.hhs.gov/fraud/report-fraud/. (Include ''Mandatory Grant Disclosures'' in subject line.)

Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or

Email: MandatoryGranteeDisclosures@oig.hhs.gov.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Roselyn Tso, Director, Office of Direct Service and Contracting Tribes, Indian Health Service, 5600 Fishers Lane, Mail Stop: 08E17, Rockville, MD 20857, Telephone: (301) 443–1104, Email: *Roselyn.Tso@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Ms. Vanietta Armstrong, Grants Management Specialist, Indian Health Service, Office of Management Services/DGM, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–4792, Fax: (301) 594–0899, Email: *Vanietta.Armstrong@ihs.gov.*

3. Questions on systems matters may be directed to: Mr. Paul Gettys, Grant Systems Coordinator, Indian Health Service, Office of Management Services/DGM, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Michael D. Weahkee,

Assistant Surgeon General, RADM, U.S. Public Health Service, Principal Deputy Director, Indian Health Service.

[FR Doc. 2019–11099 Filed 5–28–19; 8:45 am]

BILLING CODE 4165–16–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: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: June 13–14, 2019.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Panel Name: The Blood-Brain Barrier, Neurovascular Systems and CNS Therapeutics.

Date: June 18, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: June 24, 2019.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: June 25–26, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, NIH, DHHS, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, *andrew.wolfe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology and Immunotherapy.

Date: June 25–26, 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: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, *sarita.sastry@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pregnancy and Neonatology Study Section.

Date: June 25, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182 MSC 7892, Bethesda, MD 20892, 301–435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 18–039: Intellectual and Developmental Disabilities Outcomes.

Date: June 25, 2019.

Time: 3:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 E Wacker Dr, Chicago, IL 60601.

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, *moraschkc@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: June 26–27, 2019.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *pyonkh2@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: June 26–27, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Xin Yuan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–7245, *yuanx4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Small Business.

Date: June 26, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

Date: June 26, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–156: Bioengineering Research Partnerships (U01).

Date: June 26, 2019.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *kee.forbes@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS and Related Point-of Care Applications.

Date: June 26, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: June 26, 2019.

Time: 12:00 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, (Telephone Conference Call).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@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: May 21, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11082 Filed 5–28–19; 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 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 Aging Special Emphasis Panel; Biological Clock, Fasting and Longevity ZAG1–ZIJ G A1.

Date: July 2, 2019.

Time: 12:01 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Second Stage P01 Review.

Date: July 9, 2019.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 22, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11142 Filed 5–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support of Competitive Research (SCORE) Award Applications.

Date: July 19, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: Isaah S. Vincent, Ph.D., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, MD 20892, 301–594–2948, *isaah.vincent@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 22, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11144 Filed 5–28–19; 8:45 am]

BILLING CODE 4140–01–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–AI–18–053: Single-Cell Multi-Omics of HIV Persistence.

Date: June 12, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: 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 Panel: Mechanisms of Disparities in Etiology and Outcomes of Lung Cancer.

Date: June 17, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: June 19–20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epidemiology and Population Sciences Fellowships.

Date: June 20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Gianina Ramona Dumitrescu, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, 301–827–0696, *dumitrescurg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: June 20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroscience AREA Grant Applications.

Date: June 20–21, 2019.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Allerton, 701 N Michigan Avenue, Chicago, IL 60611.

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: June 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW, Washington, DC 20006.

Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, 301–827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular and Respiratory Sciences.

Date: June 20, 2019.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology.

Date: June 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *alok.mulky@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technologies.

Date: June 20, 2019.

Time: 10:30 a.m. to 5:30 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: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Biotherapeutics and Development.

Date: June 21, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Kinzie Hotel, 20 W Kinzie St., Chicago, IL 60654.

Contact Person: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@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: May 22, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11083 Filed 5–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, June 6, 2019, 1:30 p.m. to June 6, 2019, 2:15 p.m., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 1206, Bethesda, MD 20892, which was published in the **Federal Register** on May 17, 2019, 84 FR 22502.

This meeting notice is amended to change the start time to 1:00 p.m. and the end time to 2:00 p.m. The meeting is closed to the public.

Dated: May 22, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11143 Filed 5–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Environmental Health Sciences Council, June 4, 2019, 08:30 a.m. to June 5, 2019, 12:00 p.m., National Institute of Environmental Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709 which was published in the **Federal Register** on February 15, 2019, 4502.

This notice is being amended due to time changes in closed and open sessions. The closed session will now be held for June 4th from 1:00 p.m.–1:45 p.m. The open session for June 4th will be held from 2:00 p.m.–5:00 p.m. The open session for June 5th will be held from 8:30 a.m.–4:00 p.m., National Institute of Environmental Sciences, Building 101 Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. The meeting is partially closed.

Dated: May 21, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11084 Filed 5–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0126]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Collection of Qualitative Feedback Through Focus Groups

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until July 29, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0126 in the body of the letter, the agency name and Docket ID USCIS–2012–0004. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2012–0004;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the document that explains the use of this generic clearance to obtain approvals of qualitative feedback through focus groups by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0004 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Qualitative Feedback through Focus Groups.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form G–1542; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, Department of Homeland Security/U.S. Citizenship and Immigration Services seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1542 is 3,000 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: May 22, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–11121 Filed 5–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18SJ00LZM0100; OMB Control Number 1028–New]

Agency Information Collection Activities; Rio Grande Basin Conservation Database

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 29, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–New Rio Grande Basin Conservation Database, in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Delbert Humberson by email at *dhumberson@usgs.gov,* or by telephone at (512) 436–1146.

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 proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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: USGS will reach out to approximately 500 organizations previously identified by the Desert Landscape Conservation Cooperative (DLCC) to solicit conservation project data from within the Rio Grande Basin. Requested data will include information such the project's purpose, location, conservation activities, achievements, group overseeing the project, and project contact information. These data will be assembled into a geodatabase that will be stored on ScienceBase.gov for general distribution to the public. The geodatabase will be accompanied by a USGS Open-File report that documents the results of the survey and provides a user-manual for the geodatabase. This geodatabase will also be used to drive web map services on DataBasin.org. The goal of this effort is to address a need that was identified by DLCC partners to improve how resource managers in the Rio Grande Basin can coordinate their conservation efforts to help manage the river in a way that meets municipal, industrial, and environmental needs.

Title of Collection: Rio Grande Basin Conservation Database.

OMB Control Number: 1028–New.

Form Number: NA.

Type of Review: New.

Respondents/Affected Public: Respondents will include public and private land owners, and local, state and Federal entities.

Total Estimated Number of Annual Respondents: 500.

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: 20 minutes.

Total Estimated Number of Annual Burden Hours: 167.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Non-hour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Meghan Roussel,

Deputy Director, Texas Water Science Center.

[FR Doc. 2019–11092 Filed 5–28–19; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1158]

Certain Digital Video Receivers, Broadband Gateways, and Related Hardware and Software Components; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 26, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Rovi Corporation of San Jose, California and Rovi Guides, Inc. of San Jose, California. The complaint was amended on May 16, 2019. The complaint, as amended, 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 digital video receivers, broadband gateways, and related hardware and software components by reason of infringement of certain claims of U.S. Patent No. 8,001,564 (''the '564 patent''); U.S. Patent No. 7,779,445 (''the '445 patent''); U.S. Patent No. 7,386,871 (''the '871 patent''); U.S. Patent No. 8,156,528 (''the '528 patent''); U.S. Patent No. 7,301,900 (''the '900 patent''); and U.S. Patent No. 7,200,855 (''the '855 patent''). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The amended 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 amended complaint, the U.S. International Trade Commission, on May 22, 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 1–4 and 12–15 of the '564 patent; claims 1–11 and 15–24 of the '445 patent; claims 1–19, 21–29, 31–36, 38–43, 45–53, 55, and 56 of the '871 patent; claims 1–3, 6, 11–18, 20, 23, 24, 26, 27, 29–32, and 34–36 of the '528 patent; claims 1, 3, 4, 8, 10, 11, 17, 19, 23, 25, and 26 of the '900 patent; and claims 1–63 of the '855 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) 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 ''set-top boxes and broadband gateways, and their related hardware and software, such as remote controls and interactive program guides'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Rovi Corporation, 2160 Gold Street, San Jose, CA 95002

Rovi Guides, Inc., 2160 Gold Street, San Jose, CA 95002

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Comcast Corporation, One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103

Comcast Cable Communications, LLC, One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103

Comcast Cable Communications Management, LLC, One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103

Comcast Holdings Corporation, One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended 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 amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended 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 amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended 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 amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–11095 Filed 5–28–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1157]

Certain Female Fashion Dresses, Jumpsuits, Maxi Skirts, and Accoutrements; 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 20, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Style Pantry LLC of Beverly Hills, California. An amended complaint was filed on April 24, 2019. The amended complaint alleges violations of section 337 based upon the importation and sale of certain female fashion dresses, jumpsuits, maxi skirts, and accoutrements by reason of false designation, false description, dilution, and obtaining sales by false claim of association, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The amended 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 (2019).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on May 21, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain products identified in paragraph (2) by reason of false designation of origin or source, false advertising, or unfair competition in violation of 15 U.S.C. 1125(a), the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''female jumpsuit dresses, frill sleeves jumpsuits, buttoned shoulder dolman sleeve jumpsuits, Navy bell sleeve wide leg jumpsuits, folded collar jumpsuits, maxi skirts, wrap bodice dresses, midi dresses, and pant dresses'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Style Pantry LLC, 8950 W. Olympic Boulevard, Suite 505, Beverly Hills, CA 90211.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Amazon.com Inc., 440 Terry Avenue North, Seattle, WA 98109

Xunyun, Jiaxing Xunyung Imp & Exp Co. Ltd (10–05), Chuang Ye Da Sha, #808 Chengnan Rd, No. 1539, NanHuQu, JiaXingShi Zhejiang 314000, China

Jianzhang Liao, Pinkqueen Apparel Inc., #702 Jiayi Building, No. 598 Jiahe Rd, Huli District, Xiamen, China 361000

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended 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 amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended 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 amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended 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 amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–11096 Filed 5–28–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Touch-Controlled Mobile Devices, Computers, and Components Thereof, DN 3389;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Neodron Ltd. on May 22, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain touch-controlled mobile devices, computers, and components thereof. The complaint names as respondents: Amazon.com, Inc. of Seattle, WA; Dell Technologies Inc. of Round Rock, TX; Hewlett Packard Enterprise Company of San Jose, CA; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Microsoft Corporation of Redmond, WA; Motorola Mobility LLC of Chicago, IL; Samsung Electronics Co., Ltd of Korea; and Samsung Electronics America, Inc. of Ridgefield Park, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third

party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3389'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 23, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–11151 Filed 5–28–19; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0043]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Tracing Center Trace Request/ Solicitud de Rastreo del Centro Nacional de Rastreo—ATF Form 3312.1/3312.1 (S)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection was previously published in the **Federal Register**, on March 27, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until June 28, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact: Neil Troppman, ATF National Tracing Center, Law Enforcement Support Branch, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *neil.troppman@atf.gov,* or by telephone at 304–260–3643. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of a currently approved collection.

(2) *The Title of the Form/Collection:* National Tracing Center Trace Request/ Solicitud de Rastreo del Centro Nacional de Rastreo.

(3) *The agency form number, if any, and the applicable component of the Department ponsoring the collection:*

Form number: ATF Form 3312.1/3312.1 (S).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government.

Other: State, Local, or Tribal Government.

Abstract: ATF Form 3312.1/3312.1 (S) is used by Federal, State, local and certain foreign law enforcement officials, to request that ATF trace firearms used or suspected to have been used in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 6,103 respondents will utilize this form approximately 56.4439 times, and it will take each respondent approximately 6 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 34,448 hours, which is equal to 6,103 (# of respondents) * 56.4439 (# of responses per respondents) * .1 (6 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 23, 2019

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–11200 Filed 5–28–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Execution of Rendezvous and Servicing Operations

Notice is hereby given that, on May 6, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Execution of Rendezvous and Servicing Operations (''CONFERS'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, LeoLabs, Inc., Menlo Park, CA, and SpaceWorks Enterprises, Inc., Atlanta, GA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CONFERS intends to file additional written notifications disclosing all changes in membership.

On September 10, 2018, CONFERS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 19, 2018 (83 FR 53106).

The last notification was filed with the Department on January 28, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 5, 2019 (84 FR 7935).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–11145 Filed 5–28–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act (WIOA) 2019 Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIOA requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIOA defines the term ''low income individual'' as one whose total family annual income does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2019 and references the current 2019 Health and Human Services ''Poverty Guidelines.''

DATES: This notice is applicable May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4526, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015 (these are not toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

For Further Information or Questions on Federal Youth Employment Programs: Please contact Jennifer Kemp, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–4464, Washington, DC 20210; Telephone: 202–693–3377; Fax: 202–693–3113 (these are not toll-free numbers); Email:*kemp.jennifer.n@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The purpose of WIOA is to provide workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIOA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIOA. Specifically, WIOA SEC.3(36) defines the term ''low income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(V)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The governor and state and local workforce development boards use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages governors and state/local boards to consult the WIOA Final Rule and ETA guidance for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register** on January 11, 2019 (Volume 84, Number 22), pp. 1167–1168. The HHS 2019 Poverty guidelines

may also be found on the internet at *https://aspe.hhs.gov/poverty-guidelines.* ETA will have the 2019 LLSIL available on its website at *http://www.doleta.gov/llsil.*

WIOA Section 3(36)(B) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided in the Appendices to this **Federal Register** notice.

This notice updates the LLSIL to reflect cost of living increases for 2018, by calculating the percentage change in the most recent 2018 Consumer Price Index for All Urban Consumers (CPI–U) for an area to the 2018 CPI–U, and then applying this calculation to each of the May 29, 2018 LLSIL figures (published in the **Federal Register** of May 29, 2018, at Vol. 83, No.103 pp. 24495–24501) for the 2019 LLSIL.

Microsoft Excel files are used in place of the LLSIL tables that were published in the **Federal Register** notice in previous years. The LLSIL tables will be available on the ETA LLSIL website at *http://www.doleta.gov/llsil.*

The website contains updated figures for a four-person family in Table 1, listed by region for both metropolitan and non-metropolitan areas. Incomes in all of the tables are rounded up to the nearest dollar. Since program eligibility for low-income individuals, ''disadvantaged adults,'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIOA Section 3 (36)(A)(ii) and Section 3(36)(B), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the U.S. Virgin Islands.

B. Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

C. South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

D. West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Additionally, the LLSIL Excel file provides separate figures for Alaska, Hawaii, and Guam.

Data for 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual CPI–U changes for a 12-month period ending in December 2018. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are also available in the LLISL Excel file.

The LLSIL Excel file also lists each of the various figures at 70 percent of the updated 2018 LLSIL for family sizes of one to six persons. Please note, for families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is shaded.

The LLSIL Excel file also indicates 100 percent of LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at Section 3 (36)(A)(ii) and Section 3 (36)(B) of WIOA.

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State using the LLSIL Excel files on the website. The governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. An area can be part of multiple LLSIL geographies. For example, an area in the State of New Jersey may have four or more LLSIL figures. All cities, towns, and counties that are part of a metro area in New Jersey are a part of the Northeast metropolitan; some of these areas can also be a portion of the New York City MSA. New Jersey also has areas that are part of the Philadelphia MSA, a less populated area in New Jersey may be a part of the Northeast non-metropolitan. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the governor may determine which is to be used.

A state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIOA and WIOA regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIOA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIOA as defined in the law and regulations.

Molly E. Conway,

Acting Assistant Secretary.

[FR Doc. 2019–11102 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Requesting Public Comment on Three Proposed Reemployment-Related Performance Measures Adopted by the Unemployment Insurance (UI) Program That Will Align With the Workforce Innovation and Opportunity Act (WIOA) Requirements

AGENCY: Office of Unemployment Insurance (OUI), Employment and Training Administration (ETA), Department of Labor (DOL).

ACTION: Request for public comment.

SUMMARY: The Department of Labor (Department) is seeking public comment on the following proposed performance measures:

- Reemployment Rate for all UI Eligible Individuals after the 2nd Quarter of Program Exit (a Core Measure);

▪ Reemployment Rate after the 2nd Quarter of Program Exit for Reemployment Service and Eligibility Assessment (RESEA) Program participants (a Program Performance Measure); and

▪ Median Wage in the 2nd Quarter after Program Exit for RESEA Program Participants (a Program Performance Measure).

These measures are designed to align with the common performance measures for other workforce programs authorized by WIOA and will assist ETA in overseeing states' performance related to reemployment of UI claimants.

This notice also informs states of the Department's discontinuance of the UI Facilitate Reemployment Core Measure.

DATES: Submit written comments to the office listed in the addresses section below on or before June 28, 2019.

ADDRESSES: Questions or comments in response to this notice can be submitted electronically to *cowie.rhonda.m@dol.gov* or via postal mail, commercial delivery, or hand delivery.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cowie, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 at 202 693–3821 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number). Due to security-related concerns, there may be a significant delay in the receipt of submissions by United States mail. You must take this possible delay into consideration when preparing to meet the deadline for submitting comments. The Department will respond to comments directly as necessary. The Department recommends that comments not include personal information such as social security number, personal address, telephone number, email address, or confidential business information in the event comments are publically published. It is the responsibility of the commenter to determine what is personal or confidential business information.

SUPPLEMENTARY INFORMATION:

Background

Historically, it has been a goal of the UI system, the Wagner-Peyser Employment Service, and other workforce programs, to support reemployment of UI claimants as quickly as possible. Doing so helps the claimant quickly reestablish earning power and also saves state UI trust funds from paying more benefits than necessary. The relatively recent enactments of both the Workforce Innovation and Opportunity Act of 2014 (Pub. L. 113–128) and the Bi-Partisan Budget Act of 2018 (Pub. L. 115–123), which permanently authorized the RESEA program, reinforce this goal. In addition, WIOA provides for the common performance outcomes for public workforce programs broadly.

The proposed performance measures for the overall UI program and for the RESEA program provide standardized metrics that align with the WIOA common performance measures and enable state workforce agencies to assess their efforts to secure positive employment outcomes for UI claimants.

I. WIOA and Reemployment of UI Claimants

WIOA was signed into law on July 22, 2014, and is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and match employers with the skilled workers they need to compete in the global economy. Section 116 of WIOA requires states that operate core programs of the publicly-funded workforce system to comply with common performance accountability requirements. The vision of WIOA is that all workforce programs will adopt these measures as appropriate. The UI program is a mandatory partner in the publicly-funded workforce system and, as such, it is logical and appropriate for both the regular UI program and the RESEA program to adopt and align performance measures related to reemployment of UI claimants with the WIOA measures.

Under WIOA, states are required to submit common performance data to demonstrate that specified performance levels are achieved. States currently collect and report the data needed for calculating these proposed measures through the Workforce Integrated Performance System (WIPS). WIPS is an electronic performance reporting system for the Department's employment and training grants. Since September 30, 2016, states have been submitting individual record data through WIPS as part of the state quarterly and annual performance reporting process using the Participant Individual Record Layout (PIRL) (ETA 9172). The PIRL provides a standardized set of data elements, definitions, and reporting instructions used to describe the characteristics, activities, and outcomes of WIOA participants.

The WIOA performance indicators (performance measures) incorporate a statistical adjustment model, developed by the Department to establish performance year targets. The model is based on the actual economic conditions and characteristics of WIOA participants and is updated and refined with ongoing use and application as WIOA outcome data become available. ETA intends to use this previously established statistical adjustment model to establish performance year targets for the proposed Core Measure.

II. Reemployment Service and Eligibility Assessment Program (RESEA)

The RESEA program was permanently authorized by the Bipartisan Budget Act of 2018, adding a new Section 306 to the Social Security Act. One of the key goals of the RESEA program is to improve employment outcomes of individuals that receive unemployment compensation and to reduce average duration of receipt of such compensation through reemployment. A second key goal is to promote alignment with the WIOA vision of increased program integration and service delivery. Using the WIOA common measures to evaluate the states' RESEA program will effectively promote both of these goals.

To promote greater integration of the RESEA program into the workforce system through the alignment with the WIOA common measures and to support calculation of the measures, ETA requires that RESEA participants be co-enrolled in Wagner-Peyser-funded Employment Services as part of the initial RESEA session. This co-enrollment requirement was implemented in Fiscal Year 2017. As part of this enrollment, RESEA participants must be appropriately documented in Wagner-Peyser case management and performance reporting systems. The co-enrollment requirement enables implementation of the proposed Program Performance Measures to be done without any new reporting burden for states.

III. Discontinuance of the UI Facilitate Reemployment Measure for All UI Claimants

Effective October 1, 2019, ETA is discontinuing the UI Facilitate Reemployment Core Measure and the requirement that states quarterly submit to ETA the ETA 9047 (Reemployment of UI Benefits Recipients) report. The ETA 9047 report collects data based on the prior Workforce Innovation Act (WIA) requirement that reemployment be measured in the quarter after a claimant began receiving UI benefits. The sole explanatory variable used in the statistical adjustment model for this measure was the Total Unemployment Rate and, during a declining economy,

it was an effective indicator for reemployment. However, as the economy improved, this indicator became less effective leading to the measure failing to adequately capture state performance. Additionally, based on its WIA format, this measure was not aligned with WIOA standards. The proposed Reemployment Rate Core Measure for all UI eligible individuals and the proposed Reemployment Rate Program Performance Measure for RESEA program participants align with WIOA standards, and are more effective measures of UI claimants' reemployment. Implementation of these proposed measures will streamline state reporting since both the Workforce and UI programs will use the same data source and method of assessment.

IV. Proposed Core Measure and Program Performance Measures

To support reemployment goals for UI claimants and the vision of WIOA for common performance measurement across workforce programs, ETA proposes the following measures to assess UI program performance in the reemployment of claimants:

A. Reemployment Rate for All UI Eligible Individuals After the 2nd Quarter of Program Exit

This proposed Core Measure captures the percentage of UI eligible individuals who are in unsubsidized employment during the second quarter after this same group exits from the WIOA program.

Methodology: This proposed Core Measure calculates the number of UI eligible individuals who exited during the reporting quarter who are found to be employed, either through direct UI wage record match, Federal or military employment records, or supplemental wage information, in the second quarter after the exit quarter *DIVIDED* by the total number of UI eligible participants who exited during the reporting period, and expressed as a percentage. This is reflected in the following equation:

$$\frac{\textit{Number of UI Eligible Participants Reemployed in the 2nd Quarter After Program Exit}}{\textit{Total Number of Exiting UI Eligible Participants}} \textbf{ X 100}$$

Example: A claimant exited a WIOA program in February (quarter 1). The Reemployment outcome is measured in the second quarter after exit, which is quarter 3 (July-September). However, the reporting period remains quarter 1.

B. Reemployment Rate After the 2nd Quarter of Program Exit for RESEA Program Participants

This proposed Program Performance Measure captures the percentage of RESEA participants (a sub-set of UI participants) who are in unsubsidized employment during the second quarter after this same group exits from the WIOA program.

Methodology: This proposed measure calculates the number of RESEA participants who exited during the reporting quarter who are found to be employed, either through direct UI wage record match, Federal or military employment records, or supplemental wage information, in the second quarter after the exit quarter *DIVIDED* by the total number of RESEA participants who exited during the reporting period, and expressed as a percentage. This is reflected in the following equation:

$$\frac{\textit{Number of RESEA Participants Reemployed in the 2nd Quarter After Program Exit}}{\textit{Total Number of Exiting RESEA Participants}} \textbf{ X 100}$$

Example: A claimant exited a WIOA program in February (quarter 1). The Reemployment outcome is measured in the second quarter after exit, which is quarter 3 (July-September). However, the reporting period remains quarter 1.

C. Median Earnings in 2nd Quarter After Exit Quarter for RESEA Participants

This proposed Program Performance Measure captures the wage amount that is at the midpoint of all the wages (PIRL element 1704) between the highest and lowest wage earned in the second quarter after exit for all RESEA participants who exited a core program. Wages are currently reported as a data element in the PIRL.

Methodology: To determine the midpoint, the 2nd quarter after exit wages recorded in PIRL element 1704 are sorted from lowest to highest. If an odd number of unique records have been reported, the mid-point value is defined as the value of the (n+1)/2 record where n is the total unique records with 2nd quarter after exit wages. Thus if 99 wage records are reported in the 2nd quarter after exit, the midpoint is the 50th record in the array [(99 + 1) / 2 = 50]. If an even number of unique records has been reported, then the mid-point is the arithmetic mean of the two midmost wage values. Therefore, if 100 wage records are in the 2nd quarter after exit, the mid-point is (100 + 1)/2 = 50.5 and the median is the mean of the two midmost values is defined as the value of the sum of the 50th and 51st record divided by 2.

These proposed measures support the role of the UI program, including RESEA, as a one-stop partner in American Job Centers by recognizing and measuring the UI programs' effectiveness in contributing to the reemployment of UI claimants;

promoting greater program integration through common metrics across programs; and increasing alignment with the broader vision of WIOA.

V. Application of the WIOA Statistical Adjustment Model To Establish Targets

Targets for the proposed Reemployment Rate for All Eligible Individuals after the 2nd Quarter of Program Exit Core Measure will be based on the performance targets established for Wagner-Peyser program participants in the WIOA Performance Negotiation Tool. This tool is intended to facilitate the process for setting performance targets, which are based on the Statistical Adjustment Model. The Statistical Adjustment Model is required by Sec. 116(b)(3)(viii), of WIOA, and established by the Department as an objective statistical regression model to be used to make adjustments to the state negotiated levels of performance for actual economic conditions and the characteristics of participants served at the end of the program year. It also is a key factor to be used in arriving at mutual agreement on state negotiated levels of performance. State-level actual performance outcomes are a function of (a) the characteristics of the participants being served, and (b) the labor market conditions in which those participants are being served. WIOA specifically requires that both of these factors be accounted for, and the use of a statistical model enables accounting for variations as a result of both factors when negotiating performance targets.

More detailed information is available for both the WIOA Performance Negotiation Tool and the Statistical Adjustment Model at the Department website: *https://www.doleta.gov/performance/guidance/negotiating.cfm.*

Note: No performance targets will be set for the first performance period following implementation of the proposed Reemployment Rate for all UI eligible individuals after the 2nd Quarter of Program Exit Core Measure. State baseline data collected in the first performance period will inform performance targets in subsequent performance periods based on the Wagner-Peyser targets as established in the WIOA Performance Negotiation Tool. The Statistical Adjustment Model does not apply to the Reemployment Rate after the 2nd Quarter of Program Exit for RESEA Program Participants and Median Wage in the 2nd Quarter after Program Exit for RESEA Program Participants Program Performance Measures, and no performance targets will be established for these two measures.

VI. Data Source

As noted above, the data to support the proposed performance measures will come from the PIRL (ETA 9172). The PIRL framework allows states to organize data in a standardized format within WIPS using the various elements or data points. The following PIRL elements are used in the calculation of the measures described in Section IV above:

- Date of Program Exit—The quarter in which 90 days has passed and a WIOA participant has not received staff assisted services and is exited from the program (Data Element 901).
- UI Eligible Status—A WIOA participant who meets Unemployment Compensation (UC) Eligible Status Criteria by receiving or exhausting UI benefits (also called a UI Eligible Participant) (Data Element 401).
- RESEA Participants—Meets UC Eligible Status Criteria (Data Element 401=1, RESEA).
- Employed In 2nd Quarter after Exit Quarter (Data Element 1602).
- Other Reasons for Exit Criteria (Data Element 923).
- Wages in 2nd Quarter After the WIOA program Exit Quarter (Data Element 1704).

Additional information on the above PIRL elements can be found at the link below: *https://www.doleta.gov/performance/pfdocs/ETA_9172_DOL_PIRL_062816.pdf.*

There is no additional reporting burden to states as a result of implementing these measures since ETA will use data that is currently collected and reported via the PIRL (ETA 9172).

VII. Performance Period

The performance period for these measures is the one-year period ending March 31 of the performance year.

VIII. Data Collection Costs

Because these proposed measures use data currently collected through the ETA 9172 report (OMB Control #1205–0521—Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System), there will be no data collection start-up costs or any costs in addition to the current reporting requirements associated with the ETA 9172 report.

Signed in Washington, DC.

Molly Conway,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 2019–11104 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Occupational Code Assignment

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Occupational Code Assignment.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 29, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Lauren Fairley by telephone at (202) 693–3731 (this is not a toll-free number), TTY/TDD 1–877–889–5627 (this is not a toll-free number), or by email at *fairley.lauren@dol.gov* or by accessing: *http://www.onetcenter.org/ombclearance.html.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration—Division of National Programs Tools and Technical Assistance, 200 Constitution Avenue NW, C4526, Washington, DC 20210, by email: *fairley.lauren@dol.gov* or by Fax (202) 693–3015.

FOR FURTHER INFORMATION CONTACT: Lauren Fairley by telephone at (202) 693–3015 (this is not a toll-free number) or by email at *fairley.lauren@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are

clearly understood, and the impact of collection requirements can be properly assessed.

I. Background

The Occupational Code Assignment form (ETA 741) was developed as a public service to the users of the Occupational Information Network (O*NET), in an effort to help them in obtaining occupational codes and titles for jobs that they are unable to locate in O*NET. The O*NET system classifies nearly all jobs in the United States economy. However, new specialties are constantly evolving and emerging. The use of the OCA is voluntary and is provided: (1) As a uniform format to the public and private sector to submit information in order to receive assistance in identifying an occupational code; (2) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts; and (3) to provide input to a database of alternative (lay) titles to facilitate searches for occupational information in the O*NET websites including O*NET OnLine (*http://online.onetcenter.org*), My Next Move (*www.MyNextMove.gov*), My Next Move for Veterans (*www.MyNextMove.org/vets*), O*NET Code Connector (*www.onetcodeconnector.org*), as well as CareerOneStop (*www.careeronestop.org*).

The OCA process is designed to help the occupational information user relate an occupational specialty or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O*NET system. The O*NET–SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks and Work Activities. Since the O*NET–SOC system is based on the SOC system, identifying an O*NET–SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates. Section 308 of the Workforce Innovation and Opportunity Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0137.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL 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 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).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Occupational Code Assignment.

Form: ETA 741.

OMB Control Number: 1205–0137.

Affected Public: Federal government, state and local government, business or other for-profit/non-profit institutions, and individuals.

Estimated Number of Respondents: 25.

Frequency: On occasion.

Total Estimated Annual Responses: 25.

Estimated Average Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 12.5 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Molly E. Conway,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2019–11103 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Population Survey Disability Supplement

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Current Population Survey Disability Supplement,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 28, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201812-1220-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any

comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA to reinstate the Current Population Survey (CPS) Disability Supplement information collection without change from when it was most recently approved. The Disability Supplement will provide information on labor force participation rates for people with disabilities; the use of and satisfaction with programs that prepare people with disabilities for employment; the work history, barriers to employment, and workplace accommodations reported by persons with a disability; and the effect of financial assistance programs on the likelihood of working. Because the Disability Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1. 2.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 26, 2018 (83 FR 66310).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0186. The OMB 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 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.

Agency: DOL–BLS.

Title of Collection: Current Population Survey Disability Supplement.

OMB Control Number: 1220–0186.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 55,000.

Total Estimated Number of Responses: 106,000.

Total Estimated Annual Time Burden: 8,833 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 21, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–11097 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; International Training Application

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''International Training Application,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 28, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201810-1220-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the International Training Application information collection. The BLS is one of the largest labor statistics organizations in the world and has provided international training in labor market information and price indexes since 1945. Each year the BLS conducts training programs of 1 to 2 weeks duration at its training facilities in Washington, DC Potential participants, their employers, or sponsors complete the Training Application in order to provide information required to determine suitability for the BLS international training and to enroll those deemed suitable. The BLS Authorizing Statue and the Foreign Assistance Act of 1961 authorize this information collection. *See* 29 U.S.C 1, 2, 9; 22 U.S.C. 2357.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0179.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 31, 2019 (84 FR 800).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0179. The OMB 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 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.

Agency: DOL–BLS.

Title of Collection: International Training Application.

OMB Control Number: 1220–0179.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 100.

Total Estimated Annual Time Burden: 34 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 21, 2019.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–11098 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''American Time Use Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 29, 2019.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The ATUS is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others, answering questions such as:

- Do the ways people use their time vary across demographic and labor force characteristics, such as age, sex, race, ethnicity, employment status, earnings, and education?
- How much time do parents spend in the company of their children, either actively providing care or being with them while socializing, relaxing, or doing other things? How has this changed over time?
- How are earnings related to leisure time—do those with higher earnings spend more or less time relaxing and socializing?
- How much time do people spend working at their workplaces and in their homes?

The ATUS data are collected on an ongoing basis nearly every day of the year, allowing analysts to identify changes in how people spend their time.

II. Current Action

Office of Management and Budget clearance is being sought for the American Time Use Survey. This survey collects information on how individuals in the United States use their time. Collection is done on a continuous basis with the sample drawn monthly. The survey sample is drawn from

households completing their 8th month of interviews for the Current Population Survey (CPS). Households are selected to ensure a nationally-representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. Interviewers ask respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection. After each full year of collection, annual national estimates of time use for an average day, weekday, and weekend day are available.

Because the ATUS sample is a subset of households completing interviews for the CPS, the same demographic information collected from that survey is available for ATUS respondents. Comparisons of activity patterns across characteristics such as sex, race, age, disability status, and education of the respondent, as well as the presence of children and the number of adults living in the respondent's household, are possible.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: American Time Use Survey.
OMB Number: 1220–0175.
Affected Public: Individuals or households.
Total Respondents: 10,540.
Frequency: Annually.
Total Responses: 10,540.
Average Time per Response: 17.5 minutes.
Estimated Total Burden Hours: 3,074 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on May 22, 2019.

Mark Staniorski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2019–11130 Filed 5–28–19; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; NCUA Profile

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 revision of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before July 29, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection 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 the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.
Title: NCUA Call Report and Profile.
Forms: NCUA Form 5300 and 4501A.
Type of Review: Revision of a currently approved collection.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data and NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's online portal, Credit Unions Online.

The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor all federally insured credit unions with National Credit Union Share Insurance Fund (NCUSIF) insured share accounts.

Affected Public: Private Sector: Not-for-profit institutions.
Estimated Number of Respondents: 5,375.
Estimated Number of Responses per Respondent: 4.
Estimated Total Annual Responses: 21,500.
Estimated Burden Hours per Response: 6.
Estimated Total Annual Burden Hours: 129,000.
Reason for Change: Form 4501A, NCUA Profile, is being revised to include two questions to evaluate industry-wide risk exposure related to single- and multi-employer defined benefit plans. This revision will not alter the estimated burden hours per response. The effort to provide a response is minimal and will not impact the total burden.

The burden hours will reflect an adjustment to the number of respondents due to the decline in the number of federally insured credit unions. The number of federally insured credit unions completing the Call Report and Profile dropped from 5,530 to 5,375. The reduction of 3,720 burden hours reflects this adjustment.

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 May 21, 2019.

Dated: May 23, 2019.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2019–11109 Filed 5–28–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by July 29, 2019 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: ''National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide.''

OMB Approval Number: 3145–0058.

Expiration Date of Approval: October 31, 2020.

Type of Request: Intent to seek approval to extend with revision an information collection for three years. The primary purpose of this revision is to update the PAPPG to incorporate a number of policy-related changes and clarifications of language. The draft NSF PAPPG is now available for your review and consideration on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 50,000 proposals are expected during the course of one year for a total of 6,000,000 public burden hours annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) 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.

Dated: May 23, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–11124 Filed 5–28–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 p.m., Tuesday, June 18, 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: 58913 Highway Accident Report—School Bus Run-Off-Road Crash and Fire, Oakland, Iowa, December 12, 2017.

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, June 12, 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.*

FOR FURTHER INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Keith Holloway at (202) 314–6144 or by email at *hollowk@ntsb.gov.*

Friday, May 24, 2019.

LaSean McCray,

Assistant Federal Register Liaison Officer.

[FR Doc. 2019–11247 Filed 5–24–19; 11:15 am]

BILLING CODE 7533–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2019–155; Order No. 5102]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service of its intention to change prices not of general applicability to reflect a range of prices to take effect on a date determined by the Postal Service Governors. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 21, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Proposed Rates
IV. Initial Administrative Actions
V. Ordering Paragraphs

I. Introduction

On May 20, 2019, the Postal Service filed a notice of a proposed range of prices for Inbound Letter Post Small Packets and Bulky Letters (E format), and for associated Inbound Registered Service.[1] The Postal Service intends for the prices to take effect on a date to be determined by the Postal Service Governors. Notice at 1. The Postal Service concurrently filed a notice of filing of non-public library references.[2] The Postal Service's Notice requests the Commission's review and approval of new rates for Inbound E format Letter Post, but does so in a unique and unprecedented manner. As described further below, the Postal Service, in lieu of providing specific rates, has proposed a range of rates for both the piece and weight components of the proposed pricing structure.

II. Background

Current Inbound E format Letter Post prices, known as terminal dues, were set through the Universal Postal Union (UPU). Notice at 2. The UPU terminal dues system has long been a concern of the Commission, and the Commission has noted that the current pricing regime results in noncompensatory terminal dues.[3] The Commission has described UPU terminal dues as discriminatory because they are not equivalent to domestic postage rates in the destination country. Order No. 4980 at 3.

On August 23, 2018, President Donald J. Trump issued a presidential memorandum to the Postmaster General and the Chairman of the Commission, among others, entitled ''Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail.'' [4] The Postal Service states that the Presidential Memorandum identifies economic distortion as a result of foreign merchants receiving the benefit of lower distribution costs in the United States compared to domestic vendors. Notice at 3.

Consistent with the policy objectives outlined in the Presidential Memorandum, the Secretary of State gave notice to the UPU on October 17, 2018, that the United States would withdraw as a member country, effective one year from the announcement.[5] The White House Press Secretary issued a statement indicating that the President concurred with the recommendation from the Department of State that the United States should adopt self-declared rates for terminal dues as soon as practical, but no later than January 1, 2020.[6]

Since issuing its notice to withdraw from the UPU, the United States has continued to negotiate with other UPU member countries to ''reach a mutually acceptable solution to satisfy the aims of the Presidential Memorandum.'' Notice at 5. The Postal Service states that because it does not yet know the result of current State Department negotiations on achieving ''the President's stated goal to remain within the UPU following elimination of the economic distortion'' in the current system, it posits that a range of rates for E format items that accommodates those negotiations is ''in the best interests of the United States and the Postal Service.'' *Id.* The Postal Service states that this range allows the Postal Service to preserve flexibility, enabling it to institute rates for E format Letter Post whether the United States is in or out of the UPU. *Id.*

In Order No. 4980, the Commission conditionally approved the transfer of Inbound E format Letter Post items from the market dominant to competitive products list. Order No. 4980 at 23.

III. Proposed Rates

The Postal Service's Notice includes an application for non-public treatment of materials filed under seal (Attachment 1), a Statement of Explanation and Justification for the proposed rate range (Attachment 2), and a certification of prices (Attachment 3). Notice, Attachments 1–3. The Postal Service filed the proposed rates and underlying workpapers under seal in this docket. *See* Notice at 2. The Postal Service states that the price range and workpapers include ''commercially sensitive information, such as price, volume, cost, and revenue data, certain non-published rates, negotiated contract data, and underlying calculations.'' Non-Public LR Notice at 2. The Postal

[1] Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, May 20, 2019 (Notice).

[2] Notice of the United States Postal Service of Filing of Non-Public Library References, May 20, 2019 (Non-Public LR Notice).

[3] Docket No. MC2019–17, Order Conditionally Approving Transfer, January 9, 2019, at 3 (Order No. 4980).

[4] Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum), available at: *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/.*

[5] *See* Statement from the Press Secretary, October 17, 2018, available at: *https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/.*

[6] *Id.; see* Order No. 4980 at 4.

Service further explains its request for non-public treatment of the price range in its application for non-public treatment, filed pursuant to 39 CFR 3007. Notice, Attachment 1 at 1.

The Postal Service states that the proposed range of prices would conform to the requirements for competitive products under 39 U.S.C. 3633. Notice at 12. The Postal Service states that the proposed prices cover attributable costs, avoid cross-subsidization, and do not impede competitive products' collective ability to cover the appropriate share of institutional costs. *Id.*

The Postal Service states that the proposed prices will be available only to postal operators, citing fundamental differences between postal operators and private carriers. *Id.* at 13. The Postal Service states that the risk of ''cream-skimming'' and operational concerns dictate that the rates be not of general applicability, but notes that private carriers can receive similar service through negotiated service agreements. *Id.* at 14.

The Postal Service addresses concerns regarding Private Express Statutes (PES). *Id.* at 15. The Postal Service states that most Inbound E format Letter Post containing letter content would fall under exceptions for letters relating to goods, or suspensions for certain advertising. *Id.* The Postal Service states that absent exceptions or suspensions, proposed maximum rates exceed the price test even at the lowest rate increment, and the minimum rates satisfy the price test at the average weight per piece. *Id.* at 15–16. The Postal Service states that for minimum rates evaluated at individual weight steps, whose prices do not alone satisfy the price test, the total postage paid (including foreign postal operators' costs for legs 1 and 2), would likely exceed the PES price test. *Id.* at 17.

The Postal Service states that in addition to satisfying all statutory requirements, the proposed prices are consistent with the policies and reforms outlined in the Presidential Memorandum. *Id.* at 18. The Postal Service states that the proposal fully reimburses the Postal Service for its costs, avoids a preference for foreign postal operators over private carriers, and avoids a preference for foreign mailers over domestic mailers. *Id.* at 18–19. Although Inbound E format Letter Post prices would not be identical to domestic retail and commercial rates, the proposed range is justified under domestic equivalent principles. *Id.* at 19. The Postal Service notes one particular exception. The Postal Service states that E format volume dispatched by countries in UPU Group IV will be subject to lower prices, of which the Postal Service will provide notice at a later time. *Id.* at 10–11. The Postal Service states that the proposal achieves rate ''parity'' and would eliminate the economic distortion identified in the Presidential Memorandum. *Id.* at 19.

IV. Initial Administrative Actions

The Commission establishes Docket No. CP2019–155 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015. The Commission also invites comments on whether the proposed prices are consistent with the policies outlined in the Presidential Memorandum.[7] Comments are due no later than June 21, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as Public Representative to represent the interests of the general public in this docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2019–155 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015.

2. The Commission also invites interested persons to express views and offer comments on whether the proposed prices are consistent with the policies outlined in the Presidential Memorandum.

3. Comments are due no later than June 21, 2019.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–11085 Filed 5–28–19; 8:45 am]

BILLING CODE 7710–FW–P

[7] *See* Order No. 4980 at 20.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–142 and CP2019–157; MC2019–143 and CP2019–158]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 31, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–142 and CP2019–157; *Filing Title:* USPS Request to Add Priority Mail Express Contract 76 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 22, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 31, 2019.

2. *Docket No(s).:* MC2019–143 and CP2019–158; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 102 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 22, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 31, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–11169 Filed 5–28–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2019–1; Order No. 5103]

Public Inquiry on Service Performance Measurement Systems

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service request proposing modifications to its market dominant service performance measurement systems. This document informs the public of this proceeding and the technical conference, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 17, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On May 21, 2019, the Postal Service filed a request, pursuant to 39 U.S.C. 3691(b)(2) and 39 CFR 3055.5, proposing modifications to its market dominant service performance measurement systems.[1] Accompanying the Request is a library reference, which contains a copy of the United States Postal Service, Service Performance Measurement plan, revised May 20, 2019 (both redline and clean versions).[2]

The Postal Service proposes modifications in three areas. First, the Postal Service provides an update to the text of the Service Performance Measurement plan, which removes references to legacy measurement systems that are no longer in use. Request at 4. The update is being provided at the request of the Commission.[3]

Second, the Postal Service proposes to replace certain external service performance measurement systems with internal service performance measurement systems. *Id.* at 5–6. These systems measure service performance for Single-Piece First-Class Mail International—Outbound Letters and Flats, Single-Piece First-Class Mail International—Inbound Letters and Flats, and Special Services—Green Card/Return Receipt.

Third, the Postal Service requests that it be allowed to use domestic service performance measurement data as a proxy for certain aspects of inbound and outbound Single-Piece First-Class Mail International letters and flats service performance. *Id.* at 6–7.

Interested persons are invited to comment on any or all aspects of the Postal Service's proposed modifications concerning the service performance measurement systems. Comments are due June 17, 2019. The Commission does not anticipate the need for reply comments at this time. The Commission intends to evaluate the comments received and use those suggestions to help carry out its service performance measurement responsibilities under the Postal Accountability and Enhancement Act. Material filed in this docket will be available for review on the Commission's website, *http://www.prc.gov.*

It is ordered:

1. The Commission establishes Docket No. PI2019–1 for the purpose of considering the Postal Service's proposed modifications to its market dominant service performance measurement systems.

2. Interested persons may submit written comments on any or all aspects of the Postal Service's proposals no later than June 17, 2019.

3. Lyudmila Y. Bzhilyanskaya is designated to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–11111 Filed 5–28–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Response to Order No. 4945 and Request for Approval of Service Performance Measurement System Modification, May 21, 2019 (Request).

[2] Library Reference USPS–LR–PI2019–1/1, May 21, 2019.

[3] Docket No. PI2018–2, Order Conditionally Approving Modifications to Market Dominant Service Performance Measurement Systems, November 5, 2018, at 10 (Order No. 4872).

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 29, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 22, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 102 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2019–143, CP2019–158.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–11218 Filed 5–28–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85925; File No. SR–NYSEAMER–2019–19]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 967NY

May 23, 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 May 10, 2019, NYSE American LLC (''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 967NY (Price Protection—Orders) to enhance its current price protection mechanisms and adopt certain new price protection functionality for orders. 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 967NY (Price Protection—Orders) to enhance its current price protection mechanisms and adopt certain new price protection functionality for Limit Orders, specifically, Price Reasonability Checks.

The Exchange has in place various price check mechanisms that are designed to prevent incoming orders from automatically executing at potentially erroneous prices.[4] These mechanisms are designed to help maintain a fair and orderly market by mitigating potential risks associated with orders trading at prices that are extreme and potentially erroneous. The Exchange proposes to adopt Rule 967NY(c) to add new price protection mechanisms for orders to help further prevent potentially erroneous executions.

Price Reasonability Checks

Proposed Rule 967NY(c) would provide Price Reasonability Checks (the ''Price Checks'' or ''Checks'') for Limit Orders based on the principle that an option order is in error and should be rejected (or canceled) when the same result can be achieved on the market for the underlying equity security at a lesser cost.[5] The proposed Checks are based on the consolidated last sale price of the security underlying the option, once the security opens for trading (or reopens following a Trading Halt).[6] The Exchange notes that it currently has price checks in place for Market Maker quotes that are similar to the checks for options orders proposed herein (the ''MM Quote Price Checks'').[7]

Buy Orders Arbitrage Checks

Proposed Rule 967NY(c)(1) would protect buyers of puts and calls from presumptively erroneous executions. A buy order in a put series provides the right to *sell* the underlying security at the strike price, which strike price represents the option's maximum value. Proposed Rule 6.60–O(c)(1)(A) would provide that an order to buy a put would be rejected or canceled if the price of the order is equal to or greater than the strike price of the option. For example, assume that SeriesA is a put series based on Underlying ABC, which has a strike price of $50.00. FIRM1 submits a new buy order on SeriesA for $50.00, which would be rejected because it is priced equal to the $50.00 strike price. Because the Exchange presumes such orders with a price that equals or exceeds the strike price of the option to be erroneous, the Exchange believes it would be appropriate to reject or cancel such orders. In addition to being similar to the MM Quote Check, this functionality is also available on at least one other options exchange.[8]

A buy order in a call series provides the right to *buy* the underlying security at the strike price. Proposed Rule 967NY(c)(1)(B) would provide that an order to buy a call option would be canceled or rejected if the price of the order is equal to or greater than the consolidated last sale price of the underlying security (the ''last sale price''), plus a dollar amount to be determined by the Exchange (the ''specified dollar amount'') and announced by Trader Update.[9] In general, a derivative product that conveys the right to buy the underlying should not be priced higher than the prevailing value of the underlying itself. In that case, a market participant could just purchase the underlying at the prevailing value rather than pay a larger amount for the call by incurring the option premium. However, the Exchange believes a specified dollar amount is reasonable because in certain situations, market participants opt to execute certain trades (which may be part of a strategy) even if such trades occur for a price more than the last sale price.[10] However, absent the cap

[4] *See, e.g.,* Rules 967NY(a) (trading collars) and (b) (limit order price filter), Rule 967.1NY (price protection for Market Maker quotes).

[5] A Limit Order is an order to buy or sell a stated number of option contracts at a specified price, or better. *See* Rule 900.3NY(b). The proposed Price Checks apply solely to single-leg Limit Orders and are not available for Complex Orders. The Exchange notes that Complex Orders are subject to separate price protections. *See* Rule 980NY, Commentary .05 (price protection filter) and .06 (debit/credit reasonability checks).

[6] *See* proposed Rule 967NY(c).

[7] *See* Rule 967.1NY (providing two layers of price protection for quotes. The first layer assesses incoming sell quotes against the NBB and incoming buy quotes against the NBO; the second layer assesses the price of call or put bids against a specified (price) benchmark).

[8] *See* Rule 967.1NY(a)(3) (providing in relevant part that ''[a] Market Maker bid for Put options will be rejected if the price of the bid is equal to or greater than the strike price of the option''). *See also* Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.14(a)(i)(A) (providing, in relevant part, that quote or buy limit orders for a put will be rejected if the price of the quote bid or order is equal to or greater than the strike price of the option).

[9] The Exchange anticipates that it would initially set the specified dollar amount to $0.50 and whether and when that amount changes would depend upon the interest and/or behavior of market participants.

[10] A small incremental allowance outside of the last sale price allows for a small premium to offset

Continued

provided by the specified dollar, such trades could occur at prices that are too far away from the last sale price and would be deemed potentially erroneous. The Exchange also believes that allowing for the specified dollar amount above the last sale price for buy orders in call options would help address certain market scenarios, including during periods of extreme price volatility. In addition to being similar to the MM Quote Check, this functionality is also available on at least one other options exchange.[11]

The following examples illustrate this proposed functionality. For each example SeriesA is a call series based on Underlying ABC, which has a last sale price of $50.00.

Example 1: The Exchange-determined specified dollar amount is $0.00, which means orders equal to or greater than $50.00 will be rejected (*i.e.,* $50.00 (last sale) + $0.00 (specified dollar amount)). FIRM1 submits an order to buy a call in SeriesA for $51.00, which would be rejected because it is greater than $50.00. Similarly, if FIRM1 submits an order to buy a call in SeriesA for $50.00 during pre-open, the order would be accepted and held until series opens. When SeriesA opens, the order would be rejected because it is equal to $50.00.

Example 2: The Exchange-determined specified dollar amount is $5.00, which means orders equal to or greater than $55.00 will be rejected (*i.e.,* $50.00 (last sale) + $5.00 (specified dollar amount)). FIRM1 submits an order to buy a call in SeriesA for $55.00, which would be rejected because it is equal to $55.00. However, if the FIRM1 were to submit an order to buy a call in SeriesA for $50.00, this would be accepted because $50.00 is less than $55.00.

commissions associated with trading and may incentivize participants to take the other side of trades at or slightly outside of the last sale price. For the participant looking to close out their position, it may be financially beneficial to pay a small premium and close out the position rather than carry such position to expiration and take delivery. The purpose of this rule change is not to impede current order handling but to ensure execution prices are within a reasonable range of the last sale price.

[11] *See* Rule 967.1NY(a)(2) (providing in relevant part that ''Market Maker bids for Call options will be rejected if the price of the bid is equal to or greater than the price of the underlying security''). *See* CBOE Rule 6.14(a)(i)(B) (providing, in relevant part, that quote or buy limit orders for a call will be rejected if ''the quote bid or order is equal to or greater than the consolidated last sale price of the underlying security'' for equity and ETF options). CBOE also applies this check to index options based on the last disseminated value of the underlying index, which check the Exchange is not proposing in this filing. Unlike the current proposal, CBOE does not retain discretion to cancel/reject orders that are a specified dollar amount greater than the strike price.

Sell Orders Intrinsic Value Checks

Proposed Rule 967NY(c)(2) would protect sellers of calls and puts based on the ''Intrinsic Value'' of an option, which is measured as the difference between the strike price and the last sale price. A sell order in a call series creates an obligation to *sell* the underlying security at the strike price and a sell order in a put series creates an obligation to *buy* the underlying security at the strike price. Thus, the Intrinsic Value for a call option is equal to the last sale price minus the strike price; whereas the Intrinsic Value for a put option is equal to the strike price minus the last sale price.[12]

Proposed Rule 967NY(c)(2)(A) would provide that orders to sell for both calls and puts would be canceled or rejected as presumptively erroneous if the price of the order is equal to or lower than its Intrinsic Value, minus a threshold percentage (the ''threshold percentage'') to be determined by the Exchange and announced by Trader Update.[13] The Exchange believes having a threshold percentage is reasonable because in certain situations market participants willingly want to execute certain trading strategies even if such trades occur for a price less than the Intrinsic Value.[14] However, absent the cap provided by the threshold percentage, such trades could occur at prices that are too far away from the Intrinsic Value and would be deemed potentially erroneous. In addition, the threshold percentage would allow the Exchange to account for market scenarios, including during periods of extreme price volatility.

The following examples illustrate this proposed functionality.

Example 1: SeriesA is a call series based on Underlying ABC, which has a last sale price of $220.00 and a strike price of $210.00. The Exchange-determined threshold percentage is 0%, which means the Intrinsic Value is $10.00. FIRM1 submits a new sell order on SeriesA for $9.90, which would be rejected because it is below the threshold of $10.00 ($220.00 − $210.00) * (100–0%)/100.

Example 2: SeriesA is a put series based on Underlying ABC, which has a last sale price of $210.00 and a strike price of $220.00. The Exchange-determined threshold percentage is 0%, which means the Intrinsic Value is $10.00. FIRM1 submits a sell order on SeriesA for $10.00, which would be rejected because it is equal to the threshold of $10.00 ($220.00 − $210.00) * (100–0%)/100.

Example 3: SeriesA is a call series based on Underlying ABC, which has a last sale price of $220.00 and a strike price of $210.00. The Exchange-determined threshold percentage is 10%, which means the Intrinsic Value is $9.00. FIRM1 submits a sell order on SeriesA for $9.90, which would be accepted because it is above the threshold of $9.00 ($220.00 − $210.00) * (100–10%)/100.

Excluded From Price Checks

Consistent with the operation of the MM Quote Price Checks,[15] proposed Commentary .01 to the Rule would provide that the Price Checks would not apply to ''(i) any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; (ii) any options series for which the underlying security is identified as over-the counter ('OTC' or 'Pink Sheets'); (iii) any option series on an index; and (iv) Binary Return Derivatives ('ByRDs')'' (the ''Excluded Options'').[16]

The proposed change would enable the Exchange to implement the Price Checks and apply the Checks to securities for which there is reliable price data for the underlying security to perform the Check. Specifically, like the MM Quote Checks, the Exchange would exclude any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action because the last sale information would not have been adjusted for the non-standard deliverable, and would therefore be unreliable. Also, like the MM Quote Checks, options whose underlying security is traded OTC or Pink Sheets would be considered Excluded Options because the last sale information for such underlying securities is not available on an active market data feed. The Exchange would also exclude any options series overlying a stock index because Exchange does not subscribe to

[12] *See* proposed Rule 967NY(c)(2).

[13] The Exchange anticipates that it would initially set the threshold percentage to ten percent (10%) and whether and when that amount changes would depend upon the interest and/or behavior of market participants.

[14] A small incremental allowance outside of the Intrinsic Value allows for a small premium to offset commissions associated with trading and may incentivize participants to take the other side of trades at or slightly outside of the Intrinsic Value. For the participant looking to close out their position, it may be financially beneficial to pay a small premium and close out the position rather than carry such position to expiration and take delivery. The purpose of this rule change is not to impede current order handling but to ensure execution prices are within a reasonable range of the Intrinsic Value of the option.

[15] *See* Rule 967.1NY, Commentary .01.

[16] *See* proposed Rule 967NY, Commentary .01. *See also* proposed Rule 967NY(c) (providing that the Price Checks would apply, ''except as provided in Commentary .01 to this Rule'').

receive last sale information for such indices. Moreover, like the MM Quote Checks, the Exchange would exclude options on ByRDs because ByRDS track a value weighted average price (''VWAP'') and not the last sale of the underlying security.[17]

Consistent with the MM Quote Checks, the Exchange also proposes to exempt from the Price Check any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market.[18] The Exchange believes this proposed change would enable the Exchange to exclude option series, other than Excluded Options, from the Price Checks if the Exchange determines that the price protection feature would not function for the purpose of preventing erroneous orders.[19] For example, if the last sale is zero, for whatever reason, the Exchange would have the discretion to forego the price check for a particular order. Similarly, if there was some other event or change that impacted the underlying security (for example if there was a change to the ticker symbol for the underlying security), the Exchange would retain discretion to exclude the affected options series from the Price Checks The Exchange has retained discretion to maintain a fair and orderly market for the MM Quote Checks and notes that another options exchange likewise has retained discretion for similar checks as relates to orders.[20]

Technical Change to Limit Order Filter

Rule 967NY(b) describes the Limit Order Filter, which is another price protection that rejects limit orders that are priced a specified percentage away from the contra-side NBB or NBO feature offered by Exchange. The current Rule provides that limit orders received prior to the open ''will be rejected immediately before the Exchange conducts a Trading Auction of Rule 952NY.'' The Exchange proposes to clarify that such orders are not ''rejected immediately,'' but are instead accepted and then ''canceled'' before the Exchange conducts the Trading Auction ''per Rule 952NY''—as ''of Rule 952NY'' is not grammatically correct.[21] These proposed textual changes would more accurately reflect the treatment of such orders.

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,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] 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.

In particular, the Exchange believes the proposed Price Checks would protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering orders at unintended prices and orders trading at prices that are potentially erroneous, which may likely have resulted from human or operational error. The proposed Price Checks of the reasonability of Limit Order prices would assist in the maintenance of a fair and orderly market and protect investors by rejecting (or canceling) orders that exceed the corresponding benchmark. With regard to the proposed use of the specified dollar amount (as relates to buy orders for call options) and the threshold percentage (as relates to sell orders for puts and calls), the Exchange notes that in certain situations, market participants may opt to execute certain trades (that may be part of a strategy) even if such trades occur outside/away from the last sale price of the underlying or intrinsic value at seemingly erroneous prices. The Exchange believes it is appropriate to provide market participants flexibility to allow them to execute these trading strategies and therefore to adopt a buffer to permit the execution of such trades.[24]

Similarly, the Exchange believes it is appropriate to have this flexibility to determine times when the check should not apply to respond to market events, such as times of extreme price volatility. This assists the Exchange's maintenance of a fair and orderly market, which ultimately removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest.

With regard to the Excluded Options, the Exchange believes that where no reliable pricing data is available, it is appropriate to exclude such options from the Price Checks. Without such pricing information, there is risk that the Exchange may cancel or reject appropriately priced Limit Orders, which could negatively impact market participants. Further, the Exchange believes it is appropriate to have the flexibility to disable the Price Checks in response to a market event (for example, if dissemination of data was delayed and resulting in unreliable underlying values) to maintain a fair and orderly market. This will promote just and equitable principles of trade and ultimately protect investors.

The Exchange believes that the proposed Price Checks, which are substantially similar to the MM Quote Checks, would further mitigate the risk to market participants that orders are executed at erroneous prices. Specifically, the Exchange believes that the Price Checks, which are responsive to member input, will facilitate transactions in securities and perfect the mechanism of a free and open market by providing ATP Holders with additional functionality that will assist them with managing their risk. Thus, the Exchange is proposing the Price Checks for the benefit of, and in consultation with, ATP Holders. The Exchange believes the proposed rule change will help the Exchange to maintain a fair and orderly market, and provide a valuable service to investors.

Technical Changes

The Exchange notes that the proposed change to Rule 967NY(b) regarding the treatment of certain orders subject to the Limit Order Filter would provide clarity and transparency to Exchange rules and would promote just and equitable principles of trade and remove impediments to, and perfect the

[17] *See generally* Section 17, Binary Return Derivatives, Rules 900ByRDs–980NYByRDs. ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price.

[18] *See* proposed Rule 967NY Commentary .01(v).

[19] The Exchange would document, retain, and periodically review any Exchange decision to not apply the Price Checks, including the reason for the decision.

[20] *See* Rule 967.1NY, Commentary .01. CBOE Rule 6.14(a)(ii) (providing that CBOE ''may determine not to apply to a class either the put check in subparagraph (i)(A) or the call check in subparagraph (i)(B) above if a senior official at the Exchange's Help Desk determines the applicable check should not apply in the interest of maintaining a fair and orderly market'').

[21] *See* proposed Rule 967NY(b).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] Nasdaq ISE, LLC has adopted a buffer when determining the calculation of the minimum/maximum values for certain complex order strategies. *See* Securities Exchange Act Release No. 83464 (June 19, 2018), 83 FR 29583 (June 25, 2018) (SR–ISE–2018–55).

mechanism of, a free and open market and a national market system. The proposed rule amendments would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change adds price protection mechanisms for option orders of all ATP Holders submitted to the Exchange to help further prevent potentially erroneous executions, which benefits all market participants. The Price Checks apply in same manner to all ATP Holders that submit orders that are subject to the Price Checks. The Exchange believes the proposed rule change would provide market participants with additional protection from anomalous or erroneous executions.

The Exchange does not believe that the proposed enhancement to the existing price protections would impose a burden on competing options exchanges. Rather, it provides ATP Holders with the opportunity to avail themselves of similar protections that are currently available on the Exchange for Market Maker quotes and on another exchange for orders.[25]

Finally, the Exchange does not believe that the proposed clarifications to Limit Order Filter would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as these changes are not intended to address any competitive issues and would instead add more specificity, clarity and transparency regarding this functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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[26] and Rule 19b–4(f)(6) thereunder.[27]

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.

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–2019–19 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–2019–19. 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–2019–19 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11236 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

[25] *See supra* nn. 8, 11, 15, 19–20, 24.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85912; File No. SR–BX–2019–013]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees and Credits at Equity 7, Section 118(a)

May 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') 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 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 Exchange's transaction fees and credits at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. With limited exceptions, the Exchange's system of credits and charges presently applies to orders in securities in all Tapes.

The purpose of the proposed rule change is to amend the Exchange's schedule of fees and credits with the objective of increasing net incentives for members to remove liquidity from the Exchange in securities in Tape B, where the Exchange has seen less activity than it has in Tape A and C securities.

Tape B Credits

The Exchange proposes to achieve its objective of increasing removal activity in securities in Tape B, in part, by establishing a new series of credits for orders in securities in Tape B that remove liquidity from the Exchange (''Tape B Credits''). As is explained below, the proposed Tape B Credits will apply in lieu of most of the existing generally applicable liquidity removal credits. The existing credits will continue to apply, but only as to orders in securities in Tapes A and C (the ''Tape A and C Credits''). The proposed Tape B Credits will generally be higher than the Tape A and C Credits, which again the Exchange proposes as a means of targeting an increase in liquidity removal activity in securities in Tape B. The availability of the proposed Tape B Credits will also be tied to the level of a member's liquidity adding activity in Tape B securities as a means of incentivizing liquidity adding activity even as the Exchange proposes to increase its charges for orders that add liquidity in Tape B.

Specifically, the Exchange proposes to adopt the following Tape B Credits:

- $0.0026 per share executed for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that adds liquidity in Tape B securities equal to or exceeding 0.025% of total Consolidated Volume [3] during a month; and
- $0.0024 per share executed for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares during a month.

The Exchange also proposes to eliminate the following two existing credits, which apply specifically to orders in securities in Tape B, insofar as the Exchange will replace these existing credits with the higher proposed Tape B Credits:

- $0.0019 per share executed for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in December 2018; and
- $0.0019 per share executed for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that, during a given month: (i) Has a total volume (accessing and adding liquidity) equal to or exceeding 0.40% of total Consolidated Volume during that month; (ii) has a total volume that is at least 20% greater (as a percentage of Consolidated Volume) than its total volume in December 2018; and (iii) of the 20% or more increase in total volume described in (ii) herein, at least 30% is attributable to adding liquidity.

Lastly, as noted above, the proposed Tape B Credits will not supplant all of the existing credits. Instead, the Exchange proposes that the following existing credits will continue to apply to orders in securities in Tape B (as well as to orders in Tapes A and C):

- $0.0000 per share executed for an order that receives price improvement and executes against an order with a Non-displayed price; and
- $0.0000 per share executed for an order with Midpoint pegging that removes liquidity.

Change to Tape A and C Credit

Additionally, the Exchange proposes to amend its existing $0.0001 per share executed ''catch-all'' credit that applies to ''all other orders'' that remove liquidity from the Exchange. The Exchange proposes to amend the credit so that it applies to an order in securities in Tapes A and C (excluding an order with midpoint pegging and excluding an order that receives price improvement and execute against an order with a non-displayed price) that remove liquidity from the Exchange that are entered by a member that adds at least an average daily volume of 50,000 shares to the Exchange during a month. The Exchange proposes these changes to incentivize members to engage in meaningful liquidity adding activity during a month.

New Fee for Removing Liquidity From the Exchange

As explained above, the Exchange presently operates on the taker-maker model, such that it currently does not charge a fee for executions on the Exchange of orders that remove liquidity from the Exchange. However, the Exchange now proposes to establish such a fee for members that do not add a meaningful amount of liquidity to the Exchange during a month. The purpose of the fee is to help ensure that, as the Exchange seeks to establish new Tape B Credits to incentivize liquidity removal in Tape B securities, and also seeks to offset the costs of those Tape B Credits by increasing fees for adding Tape B liquidity, the Exchange continues to provide incentives to members to add meaningful amounts of liquidity to the Exchange each month.

Specifically, the Exchange proposes to charge a fee of $0.0003 per share

[3] Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

executed for an order in securities in any Tape (excluding an order with midpoint pegging and excluding an order that receives price improvement and execute against an order with a non-displayed price) that removes liquidity from the Exchange and that is entered by a member that does not add at least an average daily volume of 50,000 shares to the Exchange during a month. The fee would apply unless a member's liquidity adding activity on the Exchange qualifies it for a liquidity removal credit.

As an example of the operation of the proposed liquidity removal fee, a member that adds an average daily volume of 49,000 shares in any Tape to the Exchange would pay a $0.0003 fee per share executed for all of its orders that remove liquidity from the Exchange during that month. If in the subsequent month, however, the member increases its average daily volume of shares added to the Exchange to 50,000 shares, then it would no longer pay that $0.0003 fee, but it would instead qualify for the $0.0001 per share executed credit on its orders in securities in Tapes A and C that remove liquidity from the Exchange and the $0.0024 per share executed credit on its orders in securities in Tape B that remove liquidity from the Exchange during that month (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price).

Tape B Charges

As a means of offsetting the costs of providing the Tape B Credits, the Exchange proposes to establish a new series of charges for displayed and non-displayed orders in securities in Tape B that add liquidity to the Exchange (''Tape B Charges''). As is explained below, the proposed Tape B Charges will apply in lieu of most of the existing generally applicable liquidity adding charges. The existing charges will continue to apply, but only as to orders in securities in Tapes A and C (the ''Tape A and C Charges''). The proposed Tape B Charges are similarly structured to the existing Tape A and C Charges, which are also tied to liquidity adding activity, except that the Tape B charges will generally be higher than the Tape A and C Charges. Again, the Exchange proposes higher Tape B Charges as a means of offsetting the costs of its efforts to increase liquidity removal activity in securities in Tape B. However, relative to each other, the new displayed order charges will be lower for members that add higher volumes of Tape B liquidity during a month.

Specifically, the Exchange proposes to adopt the following Tape B Charges:

- $0.0026 per share executed for a displayed order in securities in Tape B entered by a member that adds Tape B liquidity equal to or exceeding 0.025% total Consolidated Volume during a month;
- $0.0028 per share executed for a displayed order in securities in Tape B entered by a member that adds Tape B liquidity that is less than 0.025% total Consolidated Volume during a month; and
- $0.0028 per share executed for a non-displayed order in securities in Tape B (other than orders with Midpoint pegging) entered by a member that adds Tape B liquidity equal to or exceeding 0.025% total Consolidated Volume during a month.

Lastly, as noted above, the proposed Tape B Charges will not supplant all of the existing charges. Instead, the Exchange proposes that following existing charges will continue to apply to orders in securities in Tape B (as well as to orders in Tapes A and C):

- $0.0005 per share executed for an order with Midpoint pegging entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO;
- $0.0015 per share executed for an order with Midpoint pegging entered by entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO;
- $0.0024 per share executed for a buy (sell) order with Midpoint pegging that receives an execution price that is lower (higher) than the midpoint of the NBBO;
- $0.0030 per share executed for all other non-displayed orders; and
- charges for BSTG, BSCN, BMOP, BTFY, BCRT, BDRK, and BCST orders that execute in a venue other than the Nasdaq BX Equities System.

Change to Tape A & C Charge

The Exchange presently charges a $0.0017 per share executed fee for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month as well as a $0.0014 per share executed fee for displayed orders entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month.[4] The Exchange proposes to increase the level of total Consolidated Volume that triggers the $0.0014 per share executed fee from 0.25% to 0.35%. The Exchange believes that increasing the volume threshold for a member to qualify for the lower $0.0014 per share executed fee would incentivize firms to add additional liquidity to the Exchange.

Reorganization of Schedule

To effectuate the foregoing changes in a way that is readily comprehensible to members, the Exchange proposes to reorganize and re-format Equity 7, Section 118(a). Specifically, the Exchange proposes to indicate in a chart the applicability of each credit and charge to securities in Tapes A, B, and C. Where a credit or charge does not apply to securities in a particular Tape, the chart will so indicate with the term ''N/A.''

The Exchange also proposes to re-format and emphasize in bold type the headings for the credits and fees that comprise the schedule so that members can distinguish these sections more easily. Finally, the Exchange proposes to insert a new heading—''Other charges for entering orders in the Nasdaq BX Equities System''—that will apply to charges for BSTG, BSCN, BMOP, BTFY, BCRT, BDRK, and BCST orders that execute in a venue other than the Nasdaq BX Equities System.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

[4] Going forward, these charges will apply only to securities in Tapes A and C.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [7]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [8] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[9] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [10]

Further, ''[n]o 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'. . . .'' [11] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Tape B Credits and Charges

The Exchange believes that it is reasonable to establish a new system of Tape B Credits and Tape B Charges, which will largely supplant the schedule of credits and charges that applies presently to orders in Tape B securities. The Exchange has designed this new system of Tape B Credits and Tape B Charges to provide new incentives to members to increase their liquidity removal activity in Tape B securities, while also maintaining significant levels of liquidity adding activity on the Exchange.

The Exchange believes that the proposed Tape B Credits are reasonable because they are structured similarly to existing liquidity removal credits in that they apply only when members achieve certain thresholds of participation on the Exchange. Increased participation on the Exchange will help to improve transparency and price discovery and will enhance execution opportunities for members on the Exchange. In particular, it is reasonable for the Exchange to propose to tie the availability of Tape B Credits to a member achieving certain thresholds of liquidity addition, rather than certain levels of liquidity removal (as is the case with existing credits), because the Exchange seeks to ensure that as it provides higher removal credits for orders in securities in Tape B, it also maintains adequate incentives for members to continue to add liquidity to the Exchange.

Moreover, the Exchange believes that is reasonable, equitable, and not unfairly discriminatory to propose higher credits to members that remove Tape B liquidity than it does to members that remove liquidity in securities in Tapes A and C because the Exchange has experienced less activity in Tape B securities relative to Tapes A and C securities and it wishes to specifically target increased activity with respect to Tape B securities.

The Exchange believes that its proposals are equitable and not unfairly discriminatory because they will apply to all similarly situated member firms. That is, any member may qualify for receipt of the higher credits by achieving the requisite volume of liquidity adding activity during a month.[12] Moreover, the proposed change is equitable because it will incentivize members to engage in market-improving behavior.

Likewise, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to establish new charges for displayed and non-displayed orders in securities in Tape B entered by members that add liquidity to the Exchange. The Exchange formulated the Tape B Charges similarly to the existing Tape A and C Charges in that they trigger when members add liquidity equal to or exceeding certain threshold volumes. Moreover, it is equitable and not unfairly discriminatory for the Exchange to charge higher fees to members that add Tape B liquidity than it does to members that add liquidity in securities in Tapes A and C because these new Tape B Charges will help the Exchange to specifically offset the costs of the new, higher Tape B Credits. The Exchange notes that it will also offset some of the added costs of the Tape B Charges by tying the availability of the Tape B Credits to members that achieve or maintain certain monthly levels of liquidity adding activity.

The Exchange also believes that these proposals are not unfairly discriminatory because they will apply to all similarly situated member firms. Any member will be entitled to receive the new credits or incur the new fees if they add certain minimum levels of liquidity in a month. Conversely, any member may avoid imposition of the new fees by reducing or avoiding liquidity-adding activity.

Liquidity Removal Fee

The Exchange believes it is reasonable to charge its members a fee for removing liquidity from the Exchange even though the Exchange otherwise operates on a taker-maker model. Although the concept of a liquidity removal fee is new to the Exchange, it is not novel on taker-maker exchanges. Indeed, the Exchange notes that the proposed fee is similar to a liquidity removal fee that NYSE National recently imposed on its members.[13]

Additionally, the Exchange believes that the proposed fee is reasonable because it is intended to incentivize members that engage primarily in liquidity removal activity on the Exchange to also maintain a meaningful level of liquidity adding activity as well. In particular, the Exchange believes that its members would seek to avoid incurring the proposed fee, and instead qualify for a liquidity removal credit, by increasing the extent to which it adds liquidity to the Exchange.

The Exchange believes that the proposed fee is equitable and not unfairly discriminatory because it would apply to all similarly situated members and because any member may avoid imposition of the fee by adding the requisite level of liquidity to the Exchange during a month.[14]

Changes to Tape A and C Fees and Charges

The Exchange believes that it is reasonable to amend its existing $0.0001 per share executed ''catch-all'' credit so that it applies only to orders in

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[9] *See NetCoalition,* at 534–535.

[10] *Id.* at 537.

[11] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Additionally, the Exchange believes that it is reasonable and equitable for it to eliminate its two existing $0.0019 per share executed credits for orders in Tape B securities entered by members that increase their levels of participation on the Exchange over time because these credits will be replaced by substantially higher Tape B Credits that will be easier for members to achieve.

[13] *See* Securities Exchange Act Release No. 34–85674 (Apr. 17, 2019); 84 FR 16903 (Apr. 23, 2019) (SR–NYSENAT–2019–09) (imposing fee for ETP Holders that remove liquidity from the Exchange unless a better tiered credit or fee applies).

[14] Relatedly, the Exchange believes that it is reasonable to amend its existing $0.0001 per share executed catch all credit so that it applies (i) only to orders in securities in Tapes A and C and (ii) only to members that add at least an average daily volume of 50,000 shares to the Exchange in a month.

securities in Tapes A and C that remove liquidity from the Exchange and only to the extent that members add at least an average daily volume of 50,000 shares to the Exchange during a month. The Exchange intends for the proposed change to parallel the new $0.0024 per share executed catch-all credit that it proposes for orders that remove liquidity in Tape B securities entered by members that add at least an average daily volume of 50,000 shares to the Exchange during a month. The Exchange intends for both of these credits to incentivize members to engage in a meaningful baseline volume of liquidity adding activity during a month. As noted above, the Exchange believes that it is equitable and non-discriminatory for the Exchange to provide a higher catch-all remove credit to orders in Tape B securities than it does to orders in Tapes A and C securities as a means of targeting an increase in Tape B removal activity. The proposed change is equitable and non-discriminatory because the amended credit will be available to all similarly situated members and any member may qualify for the amended credit by satisfying its liquidity addition criteria. Moreover, the proposed change is equitable because it will incentivize members to engage in market-improving behavior.

The Exchange believes that it is reasonable to increase the total Consolidated Volume threshold necessary to trigger its existing $0.0014 per share executed fee that the Exchange charges for a displayed order (going forward, in securities in Tapes A and C only) that adds liquidity entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month. The proposed increase in qualifying total Consolidated Volume will increase member incentives to add liquidity to the Exchange. The Exchange notes that the fee remains unchanged and therefore continues to be reasonable. The Exchange believes that increase to the total Consolidated Volume requirement is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. Any member may choose to avoid the fee by adding less than the level of Consolidated Volume that will trigger it. Moreover, the proposed change is equitable because it will incentivize members to engage in market-improving behavior.

Reorganization of Schedule

The Exchange believes that it is reasonable to reorganize and re-format Equity 7, Section 118(a) so that it implements the foregoing changes in a manner that is readily comprehensible to readers. The Exchange believes that the proposed reorganization is equitable and non-discriminatory in that the proposal changes will render the fee schedule easier to read and understand for all members.

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 notes that it 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 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 changes to the Exchange's charges assessed and credits available to member firms for execution of securities in Tape B do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The Exchange intends for the proposed changes, in the aggregate, to increase member incentives to remove Tape B liquidity from the Exchange while maintaining adequate incentives for members to continue to add meaningful levels of liquidity to the Exchange. The Exchange proposes to achieve these objectives by adding a new system of Tape B Credits that are significantly higher than the credits presently available to members with orders that remove Tape B liquidity from the Exchange. It also intends to establish new and higher Tape B Charges to offset the costs of the new Tape B Credits, but it proposes to offset the costs of the new Tape B Charges, in part, by tying the availability of the new Tape B Credits to members adding certain threshold volumes of liquidity to the Exchange.

The Exchange's efforts to incentivize market-improving activity are not limited to orders in securities in Tape B. Indeed, the Exchange proposes to modify the $0.001 ''catch-all'' credit applicable to orders that remove liquidity in securities in Tapes A and C so that it is available only to firms that also make meaningful contributions to liquidity on the Exchange, and it proposes to establish a liquidity removal fee for orders in securities in all Tapes for members that fail to make baseline contributions to liquidity. Finally, the Exchange proposes to increase the total Consolidated Volume threshold that triggers a $0.0014 per share executed fee for a displayed order in securities in Tapes A and C entered by a member that adds liquidity to the Exchange.

In the aggregate, all of these changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[15]

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.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2019–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–013 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11106 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85911; File No. SR–FINRA–2019–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service

May 22, 2019.

On March 27, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 establish a new issue reference data service for corporate bonds. The proposed rule change was published for comment in the **Federal Register** on April 8, 2019.[3] The Commission has received eleven comment letters on the proposal.[4]

Section 19(b)(2) of the Act [5] 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 after publication of the notice for this proposed rule change is May 23, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates July 7, 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–FINRA–2019–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11100 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, June 5, 2019, at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. 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: The subject matters of the Open Meeting will be the Commission's consideration of:

1. Whether to adopt a new rule to establish a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation to a retail customer of any securities

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977.

[4] *See* Letters from: (1) Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019; (2) Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019; (3) David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019; (4) Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019; (5) Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019; (6) Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019; (7) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated April 29, 2019; (8) Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019; (9) Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019; (10) Larry Tabb, TABB Group, dated May 15, 2019; and (11) Larry Harris, Fred V. Keenan Chair in Finance, U.S.C. Marshall School of Business, dated May 17, 2019.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

transaction or investment strategy involving securities.

2. Whether to adopt new and amended rules and forms to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors.

3. Whether to publish a Commission interpretation of the standard of conduct for investment advisers.

4. Whether to publish a Commission interpretation of the solely incidental prong of section 202(a)(11)(C) of the Investment Advisers Act of 1940.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 23, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–11231 Filed 5–24–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85910; File No. SR–EMERALD–2019–22]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503, Openings on the Exchange

May 22, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 503, Openings on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to amend subsection (f)(2)(iv)(A)2. to adopt new rule text relating to the price at which an Intermarket Sweep Order (''ISO'') is routed in order to align the rule text to the operation of the System.[3]

The Exchange's Opening Process [4] provides that if the calculated opening price included interest other than solely Exchange interest, the System will broadcast a System Imbalance Message to Exchange Members [5] and initiate a ''Route Timer,'' [6] not to exceed one second. If no new interest is received during the Route Timer, the System will route to other markets disseminating prices better than the Exchange's opening price, execute marketable interest at the opening price on the Exchange, and route to other markets disseminating prices equal to the Exchange opening price if necessary.[7] Subsection 2. of this rule states that any order that is routed pursuant to this Rule (Rule 503) will be marked as an Intermarket Sweep Order (''ISO''), as defined in Rule 1400(h), with a limit price equal to the Exchange's opening price.[8] An Intermarket Sweep Order is a limit order for an option series that is routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an Intermarket Sweep Order to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the Intermarket Sweep Order. An ISO may be either an Immediate-Or-Cancel Order or an order that expires on the day it is entered.[9]

As described in the Exchange's current rule, the Exchange will route to other markets disseminating prices better than the Exchange's opening price and will also route to other markets disseminating prices equal to the Exchange opening price if necessary.[10] The Exchange recently identified an inconsistency between the Exchange's rule and the Exchange's System behavior regarding the price of these routed orders. Given that the order is being routed to another market center for execution, the limit price of the order being routed should be equal to the away market's displayed price rather than be equal to the Exchange's opening price (although, in certain circumstances the away market's displayed price may be equal to the Exchange's opening price) as currently articulated in the Rule.

The Exchange believes that the System is operating correctly and that the rule text inadvertently described the price being used for these orders as the Exchange's opening price. The Exchange now proposes to amend subsection 2. of Rule 503(f)(2)(iv)(A) to adopt new rule text to replace the phrase, ''Exchange's opening price'' with the phrase, ''away market's displayed price.'' The new proposed rule will state that any order that is routed pursuant to this Rule will be marked as an Intermarket Sweep Order (''ISO''), as defined in Rule 1400(h), with a limit price equal to the away market's displayed price. This proposed change conforms the rule to the System's behavior.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] *See* Exchange Rule 503(f).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Exchange Rule 529(b)(2).

[7] *See* Exchange Rule 503(f)(2)(iv)(A).

[8] *See* Exchange Rule 503(f)(2)(iv)(A)2.

[9] *See* Exchange Rule 1400(h).

[10] *See supra* note 7.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that interest routed as a result of an imbalance on the Exchange during its Opening Process is properly priced for execution. This reduces the risk of trading through [13] other market centers and promotes just and equitable principles of trade by routing orders to market centers where they may receive an execution.

The Exchange's proposal more accurately describes how the System prices interest being routed pursuant to the Opening Process. The Exchange believes its proposal provides accuracy and clarity to the rule and protects investors and the public interest by clearly and accurately describing Exchange functionality which may influence investors' decisions concerning the submission of their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition as exchanges routinely route orders to one another and the Exchange has been operating in this fashion since it began operations on March 1, 2019.[14] Additionally, the Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule change clarifies current Exchange functionality and is not a competitive filing.

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Opening Process affects all Members equally, and the specific situation that the proposal addresses occurs only in the limited instance as described herein.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

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–EMERALD–2019–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements 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–EMERALD–2019–22 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11105 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation, often representing an investor limit order, displayed by another trading center.

[14] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange.); *See also* MIAX Emerald Regulatory Circular 2019–29.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85919; File No. SR–NYSEAMER–2019–20]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Independence Policy of the Board of Directors of the Exchange

May 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Independence Policy of the Board of Directors of the Exchange (''Independence Policy'') by removing obsolete and unused references and making other non-substantive changes. 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] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 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

The Exchange proposes to amend the Independence Policy by removing obsolete and unused references and making other non-substantive changes.

Pursuant to rule changes, the Exchange no longer has allied members [5] and NYSE Arca, Inc. (''NYSE Arca'') no longer has allied persons.[6] Accordingly, the Exchange proposes to delete the obsolete references to allied members and allied persons in the Independence Policy. Specifically, it proposes to:

- Delete the following text from category 1(b) of ''Independence Qualifications'': '' 'allied members' (as defined in Rule 23 of NYSE American LLC), 'allied persons' (as defined in Rule 1.1(b) of NYSE Arca, Inc.''; and
- Delete the references to allied members and allied persons from the title ''Members, Allied Members, Allied Persons and Approved Persons'' and the accompanying paragraph.

The Exchange proposes to revise statement 5 under ''Independence Qualifications'' to delete the references to NYSE Arca and the Chicago Stock Exchange, Inc. (now NYSE Chicago, Inc. (''NYSE Chicago'')), as under the proposed changes they are not referenced by name elsewhere in the text.[7] The Exchange would add ''or'' before ''NYSE National, Inc.''

In a non-substantive administrative change, the Exchange proposes to add the title ''Approval and Adoption'' and a sentence setting forth the dates that the Board of Directors of the Exchange approved and adopted the Independence Policy and the date it became effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [8] in general, and with Section 6(b)(5) in particular,[9] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would remove obsolete references to allied persons and allied members, thereby adding clarity and transparency to the Independence Policy by removing any confusion that may result if the Independence Policy retained such obsolete references. Similarly, it would make the Independence Policy more consistent with the rules of the Exchange and NYSE Arca, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Independence Policy.

The Exchange believes that the proposed amendments to the Independence Policy would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Independence Policy through removing unused references to NYSE Arca and NYSE Chicago. Each of NYSE Arca and NYSE Chicago would continue to be an ''Exchange'' as defined in the Independence Policy under ''Purpose.'' Similarly, the Exchange believes that adding the date on which the Independence Policy was approved and adopted and the date on which it became effective would add clarity and transparency to the Independence Policy. The Exchange further believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

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 Exchange Act.

[5] *See* Securities Exchange Act Release No. 84724 (December 6, 2018), 83 FR 63969 (December 12, 2018) (SR–NYSEAMER–2018–54) (notice of filing and immediate effectiveness of proposed amendments to the Exchange rules to delete references to the term ''Allied Member'').

[6] *See* Securities Exchange Act Release No. 84857 (December 19, 2018), 83 FR 66824 (December 27, 2018) (SR–NYSEARCA–2018–97) (notice of filing and immediate effectiveness of proposed amendments to delete references to the term ''Allied Person'' from the NYSE Arca rules).

[7] Each of NYSE Arca and NYSE Chicago would continue to be an ''Exchange'' as defined in the Independence Policy under ''Purpose.''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending the Independence Policy to remove obsolete references and make other non-substantive changes.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

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–NYSEAMER–2019–020 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–2019–020. 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–2019–020 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11107 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Thursday, May 30, 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.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

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.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Consideration of amicus participation;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 23, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–11239 Filed 5–24–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85920; File No. SR–PEARL–2019–19]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515, Execution of Orders

May 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 515, Execution of Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/*pearl at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 515, Execution of Orders. Specifically, the Exchange proposes to amend subsection (d)(2), Managed Interest Process for Non-Routable Orders, to remove unnecessary rule text from subsection (d)(2)(iv) relating to timestamps on orders being managed to conform the operation of the rule to the current System[3] behavior.

Currently, the rule provides that an order subject to the Managed Interest Process for Non-Routable Orders under subsection (d)(2) will retain its original limit price irrespective of the prices at which such order is booked and displayed and will maintain its original timestamp, provided however each time the order is booked and displayed at a more aggressive Book price, the order will receive a new timestamp. All orders that are re-booked and re-displayed pursuant to the Managed Interest Process for Non-Routable Orders will retain their priority as compared to other orders subject to the Managed Interest Process for Non-Routable Orders, based upon the time such order was initially received by the Exchange.[4]

The Exchange now proposes to remove the provision that each time the order is booked and displayed at a more aggressive Book price, the order will receive a new timestamp. This provision is unnecessary as orders subject to the Managed Interest Process for Non-Routable Orders are all managed to the same ABBO,[5] and the System is maintaining the priority of these orders relative to one and other based upon their original timestamp. Giving these orders a new timestamp is not necessary as their priority relative to one and other will not change. Further, the rule already contains a provision that states, ''[a]ll orders that are re-booked and re-displayed pursuant to the Managed Interest Process for Non-Routable Orders will retain their priority as compared to other orders subject to the Managed Interest Process for Non-Routable Orders, based upon the time such order was initially received by the Exchange.'' [6]

The Managed Interest Process for Non-Routable Orders provides that if the limit price of an order locks or crosses the current opposite side NBBO[7] and the PBBO[8] is inferior to the NBBO, the System will display the order one MPV[9] away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's Book price will continuously re-price to lock the new NBBO and the managed order's displayed price will continuously re-price one MPV away from the new NBBO until (A) the order has traded to and including its limit price, (B) the order has traded to and including its price protection limit at which time any remaining contracts are cancelled, (C) the order is fully executed or (D) the order is cancelled.[10]

The following example illustrates multiple non-routable orders being managed under the Exchange's Managed Interest Process for Non-Routable Orders.

Example 1

Current Market in XYZ August 50 Calls

ABBO $2.50 (10) × $2.70 (10)

Post-Only[11] interest

Order 1 buy 100 contracts, Display Price: $2.65, Book Price: $2.70, Limit Price: $2.70 [Time of receipt: 10:00:30.100]

Order 2 buy 100 contracts, Display Price: $2.65, Book Price: $2.70, Limit Price: $2.70 [Time of receipt: 10:01:30.100]

The Post-Only interest cannot be posted at its limit price of $2.70 as it would create a locked market, therefore it is managed under the Managed Interest Process for Non-Routable Orders as described in Exchange Rule 515(d)(2)(ii) and booked at a price that locks the current opposite side NBBO and displayed at a price that is one MPV away from the opposite side NBBO.

PBBO $2.65 (200) × $2.75 (10)

NBBO $2.65 (200) × $2.70 (10)

The interest at $2.70 on the away market is executed and the new best offer to sell on the away exchange is $2.80 at 10:04:45.100.

ABBO $2.50 (10) × $2.80 (10)

1. The System will manage the Post-Only interest under the Managed Interest Process for Non-Routable Orders and re-book each Post-Only Order at its limit price and re-display the order at its limit price.
2. Post-Only Order 1 to buy 100 contracts, Display Price: $2.70, Book Price: $2.70. Limit Price: $2.70 [updated at 10:04:45.500].
3. Post-Only Order 2 to buy 100 contracts, Display Price: $2.70, Book Price: $2.70.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] *See* Exchange Rule 515(d)(2)(iv).

[5] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[6] *See supra* note 4.

[7] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[8] The term ''PBBO'' means the best bid or offer on the PEARL Exchange. *See* Exchange Rule 100.

[9] The term ''MPV'' means Minimum Price Variations. *See* Exchange Rule 509.

[10] *See* Exchange Rule 515(d)(2)(ii).

[11] ''Post-Only Orders'' are orders that will not remove liquidity from the Book. Post-Only Orders are to be ranked and executed on the Exchange pursuant to Rule 514 (Priority on the Exchange), or handled pursuant to Rule 515, as appropriate, and will never route away to another trading center. Post-Only Orders are evaluated with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be handled pursuant to the Post-Only Process under Rule 515(g); or (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the ABBO where the PBBO is inferior to the ABBO, the order will be handled pursuant to the Managed Interest Process under Rule 515(d). The handling of a Post-Only Order may move from one process to the other (*i.e.,* a Post-Only Order initially handled under the Post-Only Price Process may upon reevaluation be handled under the Managed Interest Process if the PBBO changes and the Post-Only Order no longer locks or crosses an order on the System but locks or crosses the ABBO). *See* Exchange Rule 516(j).

Limit Price: $2.70 [updated at 10:04:46.000—Order 1 retains priority over Order 2 based upon the original timestamp of each order].
PBBO $2.70 (200) × $2.75 (10)
NBBO $2.70 (200) × $2.75 (10)

Current Market in XYZ August 50 Calls

ABBO $2.50 (10) × $2.80 (10)
PBBO $2.70 (200) × $2.75 (10)
Post-Only Interest
Order 1: Buy 100 contracts, Display Price: $2.70, Book Price: $2.70, Limit Price: $2.70
Order 2: Buy 100 contracts, Display Price: $2.70, Book Price: $2.70, Limit Price: $2.70
NBBO $2.70 (200) × $2.75 (10)
4. Post-Only Order 1 to buy 100 contracts is booked and displayed at is original and full limit price of $2.70 which is the most aggressive permissible price.
5. Post-Only Order 2 to buy 100 contracts is booked and displayed at is original and full limit price of $2.70 which is the most aggressive permissible price.
Order 3 Sell 100 contracts, Limit Price $2.70 is received by the Exchange.
Consider Order 1, Order 2, and Order 3 as Market Maker
1. Order 1 trades 100 contracts with Order 3 at $2.70.
2. Order 2 remains on the Book.

Current Market in XYZ August 50 Calls

PBBO $2.70 (100) × $2.75 (10)
ABBO $2.50 (10) × $2.80 (10)
NBBO $2.70 (100) × $2.75 (10)

The example demonstrates that the relative priority between non-routable orders remains the same regardless of whether the orders receive a new timestamp each time they are booked and displayed at a more aggressive Book price. In this example Order One is received 60 seconds before Order Two, thereby establishing its time priority. If Order One and Order Two were to receive new timestamps when each order was booked and displayed at a more aggressive price, Order One would still retain its priority over Order Two due to the fact that it would be handled first in accordance to its original timestamp and as a result would receive a timestamp before Order Two.

The Exchange has a separate Post-Only Price (''POP'') Process [12] which is engaged when the limit price of a Post-Only Order locks or crosses the current opposite side PBBO where the PBBO is the NBBO.[13] A Post-Only Order may be managed under the Managed Interest Process for Non-Routable Orders or the Post-Only Process depending upon market conditions.[14] A non Post-Only Do Not Route (''DNR'') [15] order may only be managed under the Managed Interest Process for Non-Routable Orders. A Post-Only Order subject to the POP Process will receive a new timestamp each time the order is booked and displayed at a more aggressive Book price.[16]

Following is an example of the Post-Only Price Process.

Example 2

Current Market in XYZ August 50 Calls

PBBO $2.65 (100) × $2.75 (10)
Post-Only Interest
Order 1 buy 10 contracts, Display Price: $2.70, Book Price: $2.70, Limit Price: $2.80
Order 2 buy 10 contracts, Display Price: $2.70, Book Price: $2.70, Limit Price: $2.80
ABBO $2.65 (10) × $2.85 (10)
PBBO $2.70 (20) × $2.75 (10)
NBBO $2.70 (20) × $2.75 (10)
Non Post-Only DNR Interest
Order 3 buy 20 contracts, Limit price $2.80

(i) *An Incoming Non Post-Only DNR interest arrives to buy at $2.80 is executed against the PBO, and the new best offer to sell on the exchange becomes $2.85.*
1. Order 3 trades 10 contracts with the PBO at $2.75. The balance of Non Post-Only Order 3 to buy 10 contracts is booked and displayed at its original limit price of $2.80.

(ii) *The System will advance Order 1 and Order 2 pursuant to the POP Process and re-book and re-display at a more aggressive Book Price with a new timestamp pursuant to the POP Process.*
2. Post-Only Order 1 to buy 10 contracts is re-booked and re-displayed with a new time stamp at the Post-Only Order's limit price of $2.80.
3. Post-Only Order 2 to buy 10 contracts is re-booked and re-displayed with a new time stamp at the Post-Only Order's limit price of $2.80.

Updated Market in XYZ August 50 Calls

PBBO $2.80 (30) × $2.85 (10)
Non Post-Only interest
Order 3 buy 10 contracts, Display Price: $2.80, Book Price: $2.80, Limit Price: $2.80
Post-Only Interest
Order 1 buy 10 contracts, Display Price: $2.80, Book Price: $2.80, Limit Price: $2.80
Order 2 buy 10 contracts, Display Price: $2.80, Book Price: $2.80, Limit Price: $2.80
ABBO $2.65 (10) × $2.85 (10)
NBBO $2.80 (30) × $2.85 (20)
Non Post-Only Interest
Order 4 sell 11 contracts, Limit price $2.80 is received by the Exchange.

(iii) An Incoming Non Post-Only interest arrives to sell at $2.80 is executed against the PBB.
4. Order 3 trades 10 contracts with Order 4 at $2.80. Order 3 is exhausted and leaves no balance.
5. Order 1 trades 1 contract with Order 4 at $2.80. The balance of Post-Only Order 1 to buy 9 contracts remains booked and displayed at its original limit price of $2.80.
6. Order 4 is exhausted and leaves no balance.
7. Order 2 does not trade. Post-Only Order 2 to buy 10 contracts remains booked and displayed at its original limit price of $2.80.

Updated Market in XYZ August 50 Calls

ABBO $2.65 (10) × $2.85 (10)
PBBO $2.80 (19) × $2.85 (10)
NBBO $2.80 (19) × $2.85 (20)

The Exchange's proposal to amend the Managed Interest Process for Non-Routable Orders to remove the provision from subsection (d)(iv) that provided that each time an order is booked and displayed at a more aggressive Book price, the order would receive a new timestamp conforms the rule to the operation of the System. It is not necessary for the System to give these orders a new timestamp each time that the order is re-booked and re-displayed as all orders being managed under the Managed Interest Process for Non-Routable Orders will maintain their relative priority to each other as all interest is being managed together to the same ABBO. Conversely, only Post-Only Orders are subject to the POP Process and are managed to the PBBO, therefore it is necessary to timestamp this interest as there may be non-routable interest that supersedes Post-Only interest as a result of the Post-Only designation which requires that Post-Only Orders not remove liquidity from the Book.[17]

2. Statutory Basis

The Exchange believes that its proposed rule changes are consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

[12] The Exchange notes that the POP Process is unaffected by this proposal.

[13] *See* Exchange Rule 515(g)(1).

[14] *See supra* note 11.

[15] A Do Not Route or ''DNR'' order is an order that will never be routed outside of the Exchange regardless of the prices displayed by away markets. A DNR order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order will be handled in accordance with the Managed Interest Process described in Rule 515(d)(2). *See* Exchange Rule 516(g).

[16] *See* Exchange Rule 515(g)(3)(iv).

[17] *See supra* note 11.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Exchange believes its proposal removes impediments to and perfects the mechanisms of a free and open market and a national market system as the removal of the proposed rule text does not have a substantive effect on the relative priority of non-routable orders being managed under the Exchange's Managed Interest Process for Non-Routable Orders. Non-routable orders will retain their priority relative to other orders subject to the Managed Interest Process for Non-Routable Orders based upon the time each order is received by the Exchange.

The Exchange's proposal to remove unnecessary rule text from its rules promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by adding clarity and precision to the Exchange's rules. The Exchange believes it is the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to add additional clarity and detail to the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all Members.[20] The proposed rule change is not a competitive filing and is intended to enhance the protection of investors and the public by clarifying the operation of the Exchange's System.

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.

[20] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX PEARL Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) [22] thereunder.

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–PEARL–2019–19 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–PEARL–2019–19. 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–PEARL–2019–19 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11101 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33492; 813–00391]

Tudor Investment Corporation and Tudor Employee Investment Fund LLC

May 23, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act and the rules and regulations thereunder, except sections 9, 17, 30, and 36 through 53 of the Act, and the rules and regulations thereunder (the ''Rules and Regulations''). With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e), and (h) of the Act, and the Rules and Regulations, and rule 38a–1 under

the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships, limited liability companies, business trusts or other entities (''Funds'') formed for the benefit of eligible employees of Tudor Investment Corporation (''Tudor'') and its affiliates from certain provisions of the Act. Each series of a Fund will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

APPLICANTS: The Company and Tudor Employee Investment Fund LLC. The requested order would supersede a prior order.[1]

FILING DATES: The application was filed on December 1, 2017 and was amended on October 19, 2018, April 4, 2019, and May 14, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 14, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 200 Elm Street, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, at (303) 844–1012, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

[1] *Tudor Employee Investment Fund LLC and Tudor Investment Corporation,* Investment Company Release Nos. 29409 (Sep. 3, 2010) (notice) and 29449 (Sep. 29, 2010) (Order).

Applicants' Representations

1. Tudor and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act'') (collectively, the ''Tudor Group,'' and each, a ''Tudor Group Entity''), have organized Tudor Employee Investment Fund LLC, a Delaware limited liability company (the ''Investment Fund'') and will in the future organize limited partnerships, limited liability companies, business trusts or other entities (each a ''Future Fund'' and, collectively with the Investment Fund, the ''Funds'') as ''employees' securities companies,'' as defined in section 2(a)(13) of the Act. The Funds are intended to provide investment opportunities that are competitive with those at other investment management and financial services firms and to facilitate the recruitment and retention of high caliber professionals.

2. The Investment Fund was formed on November 14, 2005 as a Delaware limited liability company. Tudor currently serves as the managing member and investment adviser to the Investment Fund. The Investment Fund operates as a closed-end management investment company. It seeks to achieve long-term capital appreciation through investment in affiliated and non-affiliated private investment funds, which will generally be exempt from registration under the Act pursuant to section 3(c)(1) or section 3(c)(7) of the Act and may also be funds not primarily engaged in the business of investing, reinvesting, or trading in securities, *e.g.,* commodity pools.

3. A Future Fund may be structured as a domestic or offshore limited or general partnership, limited liability company, corporation, business trust or other entity. The Tudor Group may also form parallel funds organized under the laws of various jurisdictions in order to create the same investment opportunities for Eligible Employees (defined below) in other jurisdictions. Interests in a Fund may be issued in one or more series, each of which corresponds to particular Fund investments (each, a ''Series''). In such event, each Series will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. A Fund will operate as a management investment company, and a particular Fund may operate as a ''diversified'' or ''non-diversified'' vehicle within the meaning of the Act. The investment objectives and policies may vary from one Fund to the next.

4. The Tudor group will control each Fund within the meaning of section 2(a)(9) of the Act. Each Fund has, or will have, a Tudor Group Entity serving as a general partner, managing member or other such similar entity that manages, operates and controls such Fund (a ''Manager''). The Manager will be responsible for the overall management of the Fund. The same or a different Tudor Group Entity will serve as investment adviser (''Investment Adviser'') to each Fund and will be responsible for making all investment decisions on behalf of the Fund.

5. Each of the Manager and the Investment Adviser will be an investment adviser within the meaning of sections 9 and 36 of the Act and subject to those sections. The Investment Adviser may be paid a management fee for its services to a Fund. The Manager or Investment Adviser may receive a performance-based fee or allocation (a ''Carried Interest'') based on the net gains of the Fund's investments, in addition to any amount allocable to the Manager's or Investment Adviser's capital contribution.[2] An Investment Adviser may also receive compensation for acting as an investment adviser to an Underlying Fund (as defined below). The Tudor Group will not receive any management fees or other compensation at both the Fund level and the Underlying Fund level with respect to a Fund's investment in an Underlying Fund (so as to avoid duplication).

6. If the Manager or Investment Adviser elects to recommend that a Fund enter into any side-by-side investment with an unaffiliated entity, the Manager or Investment Adviser will be permitted to engage as sub-investment adviser the unaffiliated entity (an ''Unaffiliated Subadviser''), which will be responsible for the management of such side-by-side investment.

7. Interests in the Funds will be offered in a transaction exempt from registration under section 4(a)(2) of the Securities Act of 1933, as amended (the ''1933 Act''), or Regulation D or Regulation S promulgated thereunder, and will be sold only to Qualified Participants, which term refers to: (i)

[2] If a Manager or Investment Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act''), the Carried Interest payable to it by a Fund will be pursuant to an arrangement that complies with rule 205–3 under the Advisers Act. All or a portion of the Carried Interest may be paid to individuals who are officers, employees or stockholders of the Investment Adviser or its affiliates. If the Manager or Investment Adviser is not required to register under the Advisers Act, the Carried Interest payable to it will comply with section 205(b)(3) of the Advisers Act (with such Fund treated as though it were a business development company solely for the purpose of that section).

Eligible Employees (as defined below); (ii) Eligible Family Members (as defined below); (iii) Eligible Investment Vehicles (as defined below); and (iv) the Tudor Group. Prior to offering interests in a Fund to a Qualified Participant, the Tudor Group must reasonably believe that the Eligible Employee or Eligible Family Member will be capable of understanding and evaluating the merits and risks of participation in a Fund and that each such individual is able to bear the economic risk of such participation and afford a complete loss of his or her investments in the Fund.

8. The term ''Eligible Employees'' is defined as current or former employees, officers and directors of the Tudor Group (including people in administration, marketing and operations) and current consultants engaged on retainer to provide services and professional expertise on an ongoing basis to the Tudor Group (''Consultants'').[3] The term ''Eligible Family Members'' is defined as spouses, parents, children, spouses of children, brothers, sisters and grandchildren of Eligible Employees, including step and adoptive relationships.[4] The term ''Eligible Investment Vehicles'' is defined as: (i) A trust of which a trustee, grantor and/or beneficiary is an Eligible Employee; [5] (ii) a partnership, corporation, or other entity controlled by an Eligible Employee; and (iii) a trust or other entity established solely for the benefit of Eligible Employees and/or Eligible Family Members. Each Eligible Employee and Eligible Family Member will be an Accredited Investor under rule 501(a)(5) or rule 501(a)(6) of Regulation D under the 1933 Act, except that a maximum of 35 Eligible Employees who are sophisticated investors but who are not Accredited Investors may become investors in a Fund if each of them falls into one of the following categories: (i) An Eligible Employee who (a) has a graduate degree in business, law or accounting, (b) has a minimum of five years of consulting, investment management, investment banking, legal or similar business experience, and (c) had reportable income from all sources (including any profit shares or bonus) of $100,000 in each of the two most recent years immediately preceding the Eligible Employee's admission as an investor of the Fund and has a reasonable expectation of income from all sources of at least $140,000 in each year in which the Eligible Employee will be committed to make investments in the Fund; [6] or (ii) Eligible Employees who are ''knowledgeable employees'' as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a ''covered company'' for purposes of the rule).

9. A Qualified Participant may purchase an interest through an Eligible Investment Vehicle only if either (i) the investment vehicle is an accredited investor, as defined in rule 501(a) of Regulation D under the 1933 Act or (ii) the Eligible Employee is a settlor [7] and principal investment decision-maker with respect to the investment vehicle. Eligible Investment Vehicles that are not Accredited Investors will be counted in accordance with Regulation D toward the 35 non-Accredited Investor limit discussed above.

10. The terms of each Fund will be fully disclosed to each Qualified Participant (or person making the investment on behalf of the Qualified Participant) at the time the Qualified Participant is invited to participate in the Fund. The Fund will send its investors an annual financial statement in accordance with Rule 206(4)–2(b)(4)(i) under the Advisers Act. The financial statement will be audited [8] by independent certified public accountants. In addition, as soon as practicable after the end of each calendar year, a report will be sent to each investor setting forth the information with respect such investor's share of income, gains, losses, credits, and other items for U.S. federal and state income tax purposes resulting from the operation of the Fund during that year.

11. Interests in a Fund will not be transferable except with the express consent of the Manager, and then only to a Qualified Participant. No sales load or similar fee of any kind will be charged in connection with the sale of interests in a Fund.

12. A Fund may or may not offer investors the right to redeem their interests at such times and subject to such conditions as are set forth in the governing documents of the Fund. A Manager may have the right, but not the obligation, to repurchase, redeem, cancel or transfer to another Qualified Participant the interest of (i) an Eligible Employee who ceases to be an employee, officer, director or current consultant of any Tudor Group Entity for any reason or (ii) any Eligible Family Member of any person described in clause (i). The governing documents for each Fund will describe, if applicable, the amount that an investor would receive upon repurchase, redemption, cancellation or transfer of its interest.

13. Among other assets, a Fund may invest in one or more pooled investment vehicles (including private funds relying on sections 3(c)(1) and 3(c)(7) under the Act) sponsored by the Tudor Group or by third parties (each, an ''Underlying Fund'').[9] One Fund may also invest in another Fund in a ''master-feeder'' or similar structure. A Fund may also be operated as a parallel

[3] In order to participate in the Funds, Consultants must be currently engaged by the Tudor Group and will be required to be sophisticated investors who qualify as accredited investors (''Accredited Investors'') under rule 501(a) of Regulation D. If a Consultant is an entity (such as, for example, a law firm or consulting firm), and the Consultant proposes to invest in the Fund through a partnership, corporation or other entity that is controlled by the Consultant, the individual participants in such partnership, corporation or other entity will be limited to senior level employees, members or partners of the Consultant who are responsible for the activities of the Consultant or the activities of the Consultant in relation to the Tudor Group and will be required to qualify as Accredited Investors. In addition, such entities will be limited to businesses controlled by individuals who have levels of expertise and sophistication in the area of investments in securities that are comparable to other Eligible Employees who are employees, officers or directors of the Tudor Group and who have an interest in maintaining an ongoing relationship with the Tudor Group. The individuals participating through such entities will belong to that class of persons who will have access to the directors and officers of the Manager and its affiliates and/or the officers of the Tudor Group responsible for making investments for the Funds similar to the access afforded other Eligible Employees who are employees, officers or directors of the Tudor Group.

[4] In order to ensure that a close nexus between the Qualified Participants and the Tudor Group is maintained, the terms of each governing document for a Fund will provide that any Eligible Family Member participating in such Fund (either through direct beneficial ownership of an interest or as an indirect beneficial owner through an Eligible Investment Vehicle) cannot, in any event, be more than two generations removed from an Eligible Employee.

[5] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Eligible Investment Vehicle'' is intended to enable Eligible Employees to make investments in the Funds through personal investment vehicles for the purpose of personal and family investment and estate planning objectives.

[6] An Eligible Employee described in this category (i) will only be permitted to invest in a Fund if such individual represents and warrants that he or she will not commit in any year more than 10% of his or her income from all sources for the immediately preceding year, in the aggregate, in a Fund and in all other Funds in which that investor has previously invested.

[7] If such investment vehicle is an entity other than a trust, the term ''settlor'' will be read to mean a person who created such vehicle, alone or together with other eligible individuals, and contributed funds to such vehicle.

[8] ''Audit'' has the meaning defined in rule 1–02(d) of Regulation S–X.

[9] Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern a Fund's eligibility to invest in an Underlying Fund relying on section 3(c)(1) or 3(c)(7) of the Act or an Underlying Fund's status under the Act.

fund making investments on a side-by-side basis with Tudor Group entities.

14. A Fund may co-invest in a portfolio company (or a pooled investment vehicle) with a Tudor Group Entity or with an investment fund or separate account organized primarily for the benefit of investors who are not affiliated with the Tudor Group (''Third Party Investors) and over which a Tudor Group Entity exercises investment discretion or which is sponsored by a Tudor Group Entity (a ''Tudor Group Third Party Fund''). Co-investments with a Tudor Group Entity or with a Tudor Group Third Party Fund in a transaction in which the Tudor Group's investment was made pursuant to a contractual obligation to a Tudor Group Third Party Fund will not be subject to Condition 3 below. All other side-by-side investments held by Tudor Group entities will be subject to Condition 3.

15. If the Tudor Group makes loans to a Fund, the lender will be entitled to receive interest, provided that the interest rate will be no less favorable to the borrower than the rate obtainable on an arm's length basis. The possibility of any such borrowings, as well as the terms thereof, would be disclosed to Qualified Participants prior to their investment in a Fund. Any indebtedness of the Fund will be the debt of the Fund and without recourse to the investors. A Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own securities of the Fund (other than short-term paper). A Fund will not lend any funds to a Tudor Group Entity.

16. A Fund will not acquire any security issued by a registered investment company if immediately after such acquisition such Fund will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act if and to the extent that such exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that in connection with any order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the Commission deems it necessary and appropriate in the public interest or for the protection of investors. Applicants submit that it would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act for the Commission to issue an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act and the rules and regulations thereunder, except sections 9, 17, 30, and 36 through 53 of the Act, and the Rules and Regulations. With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e), and (h) of the Act, and the Rules and Regulations, and rule 38a–1 under the Act, Applicants request a limited exemption as set forth in the application.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling or purchasing any security or other property to or from the investment company. Applicants request an exemption from section 17(a) to the extent necessary to (a) permit a Tudor Group Entity or a Tudor Group Third Party Fund (or any affiliated person of such Tudor Group Entity or Tudor Group Third Party Fund), or any affiliated person of a Fund (or affiliated persons of such persons), acting as principal, to engage in any transaction directly or indirectly with any Fund or any company controlled by such Fund; and (b) to permit a Fund to invest or engage in any transaction with any Tudor Group Entity, acting as principal, (i) in which such Fund, any company controlled by such Fund or any Tudor Group Entity or any Tudor Group Third Party Fund has invested or will invest, or (ii) with which such Fund, any company controlled by such Fund or any Tudor Group Entity or Tudor Group Third Party Fund is or will become otherwise affiliated; and (c) permit a Third Party Investor, acting as a principal, to engage in any transaction directly or indirectly with a Fund or any company controlled by such Fund. The transactions to which any Fund is a party will be effected only after a determination by the Manager that the requirements of Conditions 1, 2 and 6 (set forth below) have been satisfied. Applicants, on behalf of the Funds, represent that any transactions otherwise subject to section 17(a) of the Act, for which exemptive relief has not been requested, would require approval of the Commission.

4. Applicants submit that an exemption from section 17(a) is consistent with the policy of each Fund and the protection of investors. Applicants state that the investors in each Fund will have been fully informed of the possible extent of such Fund's dealings with the Tudor Group and of the potential conflicts of interest that may exist. Applicants also state that, as professionals employed in the investment management and securities businesses, or in administrative, financial, accounting, legal, sales, marketing, risk management or operational activities related thereto, the investors will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the investors in each Fund, on the one hand, and the Tudor Group, on the other hand, is the best insurance against any risk of abuse. Applicants acknowledge that the requested relief will not extend to any transactions between a Fund and an Unaffiliated Subadviser or an affiliated person of the Unaffiliated Subadviser, or between a Fund and any person who is not an employee, officer or director of the Tudor Group or is an entity outside of the Tudor Group and is an affiliated person of the Fund as defined in section 2(a)(3)(E) of the Act (''Advisory Person'') or any affiliated person of such person.

5. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such a person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request an exemption from section 17(d) and rule 17d–1 to the

extent necessary to permit affiliated persons of each Fund, or affiliated persons of any of such persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Fund or a company controlled by such Fund is a participant. The exemption would permit, among other things, co-investments by each Fund, Tudor Group Third Party Fund and individual members or employees, officers, directors or consultants of the Tudor Group making their own individual investment decisions apart from the Tudor Group. Applicants acknowledge that the requested relief will not extend to any transaction in which an Unaffiliated Subadviser or an Advisory Person or an affiliated person of either has an interest.

6. Applicants assert that compliance with section 17(d) would prevent each Fund from achieving a principal purpose, which is to provide a vehicle for Eligible Employees (and other permitted investors) to co-invest with the Tudor Group or, to the extent permitted by the terms of the Fund, with other employees, officers, directors or consultants of the Tudor Group or Tudor Group entities or with an Tudor Group Third Party Fund. Applicants further contend that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because an investor in such Fund or other affiliated person of such Fund also had, or contemplated making, a similar investment. Applicants submit that it is likely that suitable investments will be brought to the attention of a Fund because of its affiliation with the Tudor Group's large capital resources and investment management experience, and that attractive investment opportunities of the types considered by a Fund often require each participant in the transaction to make funds available in an amount that may be substantially greater than those the Fund would independently be able to provide. Applicants contend that, as a result, a Fund's access to such opportunities may have to be through co-investment with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. In addition, Applicants represent that any transactions otherwise subject to section 17(d) of the Act and rule 17d–1 thereunder, for which exemptive relief has not been requested, would require approval by the Commission.

7. Co-investments with a Tudor Group Entity or with a Tudor Group Third Party Fund in a transaction in which the Tudor Group's investment was made pursuant to a contractual obligation to a Tudor Group Third Party Fund will not be subject to Condition 3 below. Applicants believe that the interests of the Eligible Employees participating in a Fund will be adequately protected in such situations because the Tudor Group is likely to invest a portion of its own capital in Tudor Group Third Party Fund investments, either through such Tudor Group Third Party Fund or on a side-by-side basis (which Tudor Group investments will be subject to substantially the same terms as those applicable to such Tudor Group Third Party Fund, except as otherwise disclosed in the governing documents of the relevant Fund). Applicants assert that if Condition 3 were to apply to the Tudor Group's investment in these situations, the Tudor Group Third Party Fund would be indirectly burdened by the requirements of Condition 3. Applicants further assert that the relationship of a Fund to a Tudor Group Third Party Fund is fundamentally different from such Fund's relationship to the Tudor Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Funds from any overreaching by the Tudor Group in the employer/employee context, whereas the same concerns are not present with respect to the Funds vis-à-vis the investors in a Tudor Group Third Party Fund.

8. Section 17(e) of the Act and rule 17e–1 thereunder limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Tudor Group Entity (including the Manager) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Fund in connection with the purchase or sale by the Fund of securities, provided that the fees or other compensation are deemed ''usual and customary.'' Applicants state that for purposes of the application, fees or other compensation that are charged or received by a Tudor Group Entity will be deemed to be ''usual and customary'' only if (i) the Fund is purchasing or selling securities alongside other unaffiliated third parties, Tudor Group Third Party Funds or Third Party Investors who are also similarly purchasing or selling securities, (ii) the fees or other compensation being charged to the Fund are also being charged to the unaffiliated third parties, Tudor Group Third Party Funds or Third Party Investors, and (iii) the amount of securities being purchased or sold by the Fund does not exceed 50% of the total amount of securities being purchased or sold by the Fund and the unaffiliated third parties, Tudor Group Third Party Funds or Third Party Investors. Applicants state that compliance with section 17(e) would prevent a Fund from participating in a transaction in which the Tudor Group, for other business reasons, does not wish to appear as if the Fund is being treated in a more favorable manner (by being charged lower fees) than other third parties also participating in the transaction. Applicants assert that the concerns of overreaching and abuse that section 17(e) and rule 17e–1 were designed to prevent are alleviated by the conditions that ensure that (i) the fees or other compensation paid by a Fund to a Tudor Group Entity are those negotiated at arm's length with unaffiliated third parties and (ii) the unaffiliated third parties have as great or greater interest as the Fund in the transactions as a whole.

9. Rule 17e–1(b) under the Act requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires each Fund to comply with the fund governance standards defined in rule 0–1(a)(7) under the Act. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Fund to comply with rule 17e–1(b) without the necessity of having a majority of the directors of the Fund who are not ''interested persons'' take such actions and make such approvals as are set forth in rule 17(e)–1(b). Applicants note that in the event that all the directors of the Manager will be affiliated persons, a Fund could not comply with rule 17(e)–1(b) without the relief requested. Applicants represent that in such an event, the Fund will comply with rule 17e–1(b) by having a majority of the directors (or members of a comparable body) of the Fund or its Manager take such actions and make such approvals as are set forth in rule 17e–1(b). Applicants state that each Fund will otherwise comply with all other requirements of rule 17e–1(b). Applicants further request an exemption from rule 17(e)–1(c) to the extent necessary to permit each Fund to comply with rule 17e–1 without the necessity of having a majority of the

directors of the Fund be ''disinterested persons'' as set forth in rule 17e–1(c). Applicants note that in the event that all the directors of the Manager will be affiliated persons, a Fund could not comply with rule 17e–1 without the relief requested. Applicants represent that each Fund will otherwise comply with all other requirements of rule 17e–1(c).

10. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange or the company itself in accordance with Commission rules. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request relief from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Manager or the Investment Adviser for purposes of paragraph (b) of the rule; (b) for purposes of paragraph (d) of the rule, (i) employees of Tudor Group or its affiliates (including the Manager) will be deemed to be employees of the Funds, (ii) officers or managers of the Manager of a Fund will be deemed to be officers of the Fund and (iii) the Manager of a Fund or its board of directors will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under rule 17f–2(f), verification will be effected quarterly by two employees of the Manager who are also employees of the Tudor Group responsible for the administrative, legal and/or compliance functions for funds managed or sponsored by the Tudor Group and who have specific knowledge of custody requirements, policies and procedures of the Funds. Applicants expect that, with respect to certain Funds, many of their investments will be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that for such a Fund, these instruments are most suitably kept in the files of the Manager or its Investment Adviser, where they can be referred to as necessary. Applicants represent that they will comply with all other provisions of rule 17f–2, including the recordkeeping requirements of paragraph (e).

11. Section 17(g) of the Act and rule 17g–1 thereunder generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not ''interested persons'' of a registered investment company take certain actions and give certain approvals relating to fidelity bonding. Among other things, the rule also requires that the board of directors of an investment company relying on the rule satisfy the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from rule 17g–1 to the extent necessary to permit a Fund to comply with rule 17g–1 by having the Manager of the Fund take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that in the event all the directors of the Manager will be affiliated persons, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants contend that the filing requirements are burdensome and unnecessary as applied to the Funds and represent that the Manager of each Fund will designate a person to maintain the records otherwise required to be filed with the Commission under rule 17g–1(g). Applicants further contend that the notices otherwise required to be given to the board of directors will be unnecessary as the Funds typically will not have boards of directors. Applicants represent that, to the extent a Fund does have a board of directors, such notices will be delivered in compliance with rule 17g–1. Applicants represent that each Fund will comply with all other requirements of rule 17g–1.

12. Section 17(j) of the Act and rule 17j–1 require that every registered investment company adopt a written code of ethics that contains provisions reasonably necessary to prevent ''access persons'' from violating the anti-fraud provisions of the rule. Under rule 17j–1, the investment company's access persons must report to the investment company with respect to transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in such security. Applicants request an exemption from section 17(j) and the provisions of rule 17j–1 (except for the anti-fraud provisions of rule 17j–1(b)) because they assert that these requirements are burdensome and unnecessary as applied to the Funds. The relief requested will extend only to entities within the Tudor Group and is not requested with respect to any Unaffiliated Subadviser or Advisory Person.

13. Sections 30(a), (b) and (e) of the Act and the rules thereunder generally require that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the investors in such Fund. Applicants request relief under sections 30(a), (b) and (e) to the extent necessary to permit each Fund to report annually to its investors in the manner described in the application. Section 30(h) of the Act requires that every officer, director, member of an advisory board, investment adviser or affiliated person of an investment adviser of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Exchange Act. Applicants request an exemption from section 30(h) of the Act to the extent necessary to exempt the Manager of each Fund, directors and officers of the Manager and any other persons who may be deemed members of an advisory board or investment adviser (and affiliated persons thereof) of such Fund from filing Forms 3, 4, and 5 with respect to their ownership of interests in such Fund under section 16 of the Exchange Act. Applicants assert that, because there will be no trading market and the transfers of interests are severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

14. Rule 38a–1 requires registered investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Fund will comply will rule 38a–1(a), (c) and (d), except that: (i) To the extent the Fund does not have a board of directors, the board of directors of the Manager will fulfill the responsibilities assigned to the Fund's board of directors under the rule; (ii) to the extent the board of directors of the Manager does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained; and (iii) to the extent

the board of directors of the Manager does not have any independent members, the Funds will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of directors of the Manager as constituted. Applicants represent that each Fund has adopted written policies and procedures reasonably designed to prevent violations of the terms and conditions of the application, has appointed a chief compliance officer and is otherwise in compliance with the terms and conditions of the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder to which a Fund is a party (the ''Section 17 Transactions'') will be effected only if the Manager determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund and the investors and do not involve overreaching of such Fund or its investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund and the investors, such Fund's organizational documents and such Fund's reports to its investors.

In addition, the Manager will record and preserve a description of all Section 17 Transactions, the Manager's findings, the information or materials upon which the findings are based and the basis for such findings. All such records will be maintained for the life of the Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff.[10]

2. The Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of such a person, promoter or principal underwriter.

3. The Manager will not cause the funds of any Fund to be invested in any investment in which a Co-Investor (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and a Co-Investor are participants, unless prior to such investment any such Co-Investor agrees, prior to disposing of all or part of its investment, to (a) give the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrain from disposing of its investment unless the Fund has the opportunity to dispose of the Fund's investment prior to or concurrently with, on the same terms as, and on a pro rata basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund (other than a Tudor Group Third Party Fund); (b) the Tudor Group (except when a Tudor Group Entity co-invests with a Fund and a Tudor Group Third Party Fund pursuant to a contractual obligation to the Tudor Group Third Party Fund); (c) an officer or director of a Tudor Group Entity; or (d) an entity (other than a Tudor Group Third Party Fund) in which the Tudor Group acts as general partner or has similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor, including step or adoptive relationships, or a trust or other investment vehicle established for any Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act, (ii) NMS stocks, pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder, (iii) government securities as defined in section 2(a)(16) of the Act, (iv) ''Eligible Securities'' as defined in rule 2a–7 under the Act, or (v) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Fund and its Manager will maintain and preserve, for the life of such Fund and at least six years thereafter, such accounts, books and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the investors in such Fund, and each annual report of such Fund required to be sent to such investors, and agree that all such records will be subject to examination by the Commission and its staff.[11]

5. Within 120 days after the end of each fiscal year of each Fund, or as soon as practicable thereafter, the Manager of each Fund will send to each investor in such Fund who had an interest in any capital account of the Fund, at any time during the fiscal year then ended, Fund financial statements audited by the Fund's independent accountants, except in the case of a Fund formed to make a single portfolio investment. In such cases, financial statements may be unaudited, in which event each investor will receive financial statements of the single portfolio investment audited by such entity's independent accountants. At the end of each fiscal year and at other times as necessary in accordance with customary practice, the Manager will make a valuation or cause a valuation to be made of all of the assets of the Fund as of the fiscal year end. In addition, as soon as practicable after the end of each tax year of a Fund, the Manager of such Fund will send a report to each person who was an investor in such Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the investor of his, her or its U.S. federal and state income tax returns and a report of the investment activities of the Fund during that fiscal year.

6. If a Fund makes purchases or sales from or to an entity affiliated with the Fund by reason of an officer, director or employee of the Tudor Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11205 Filed 5–28–19; 8:45 am]

BILLING CODE 8011–01–P

[10] Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[11] Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85913; File No. SR–NYSE–2019–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Independence Policy of the Board of Directors of the Exchange

May 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2019, New York Stock Exchange LLC (''NYSE'' 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Independence Policy of the Board of Directors of the Exchange (''Independence Policy'') by removing obsolete and unused references and making other non-substantive changes. 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] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 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

The Exchange proposes to amend the Independence Policy by removing obsolete and unused references and making other non-substantive changes.

Pursuant to rule changes, NYSE American LLC (''NYSE American'') no longer has allied members [5] and NYSE Arca, Inc. (''NYSE Arca'') no longer has allied persons.[6] Accordingly, the Exchange proposes to delete the obsolete references to allied members and allied persons in the Independence Policy. Specifically, it proposes to:

- Delete the following text from category 1(b) of ''Independence Qualifications'': '' 'allied members' (as defined in Rule 23 of NYSE American LLC), 'allied persons' (as defined in Rule 1.1(b) of NYSE Arca, Inc.''; and
- Delete the references to allied members and allied persons from the title ''Members, Allied Members, Allied Persons and Approved Persons'' and the accompanying paragraph.

The Exchange proposes to revise statement 5 under ''Independence Qualifications'' to delete the references to NYSE Arca and the Chicago Stock Exchange, Inc. (now NYSE Chicago, Inc. (''NYSE Chicago'')), as under the proposed changes they are not referenced by name elsewhere in the text.[7] The Exchange would add ''or'' before ''NYSE National, Inc.''

In a non-substantive administrative change, the Exchange proposes to add the title ''Approval and Adoption'' and a sentence setting forth the dates that the Board of Directors of the Exchange approved and adopted the Independence Policy and the date it became effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [8] in general, and with Section 6(b)(5) in particular,[9] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would remove obsolete references to allied persons and allied members, thereby adding clarity and transparency to the Independence Policy by removing any confusion that may result if the Independence Policy retained such obsolete references. Similarly, it would make the Independence Policy more consistent with the rules of NYSE American and NYSE Arca, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Independence Policy.

The Exchange believes that the proposed amendments to the Independence Policy would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Independence Policy through removing unused references to NYSE Arca and NYSE Chicago. Each of NYSE Arca and NYSE Chicago would continue to be an ''Exchange'' as defined in the Independence Policy under ''Purpose.'' Similarly, the Exchange believes that adding the date on which the Independence Policy was approved and adopted and the date on which it became effective would add clarity and transparency to the Independence Policy. The Exchange further believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

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 Exchange Act.

[5] *See* Securities Exchange Act Release No. 84724 (December 6, 2018), 83 FR 63969 (December 12, 2018) (SR–NYSEAMER–2018–54) (notice of filing and immediate effectiveness of proposed amendments to the NYSE American rules to delete references to the term ''Allied Member'').

[6] *See* Securities Exchange Act Release No. 84857 (December 19, 2018), 83 FR 66824 (December 27, 2018) (SR–NYSEARCA–2018–97) (notice of filing and immediate effectiveness of proposed amendments to delete references to the term ''Allied Person'' from the NYSE Arca rules).

[7] Each of NYSE Arca and NYSE Chicago would continue to be an ''Exchange'' as defined in the Independence Policy under ''Purpose.''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending the Independence Policy to remove obsolete references and make other non-substantive changes.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

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–NYSE–2019–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–027 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11108 Filed 5–28–19; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15965 and #15966; Texas Disaster Number TX–00516]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 05/22/2019.

Incident: Severe Weather and Tornadoes.

Incident Period: 04/24/2019.

DATES: Issued on 05/22/2019.

Physical Loan Application Deadline Date: 07/22/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Augustine.

Contiguous Counties:

Texas: Angelina, Jasper, Nacogdoches, Sabine, Shelby.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15965 C and for economic injury is 15966 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 22, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–11189 Filed 5–28–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/32–0648]

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/32–0648 issued to Michigan Growth Capital Partners SBIC, L.P. said license is hereby declared null and void.

Dated: April 4, 2019.

United States Small Business Administration

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2019–11193 Filed 5–28–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0461]

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0461 issued to Alpine Investors IV SBIC, LP said license is hereby declared null and void.

Dated: April 2, 2019.

United States Small Business Administration

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2019–11191 Filed 5–28–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15963 and #15964; Texas Disaster Number TX–00515]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 05/22/2019.

Incident: Severe Weather and Tornadoes.

Incident Period: 04/13/2019 through 04/15/2019.

DATES: Issued on 05/22/2019.

Physical Loan Application Deadline Date: 07/22/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee, Robertson.

Contiguous Counties:

Texas: Anderson, Angelina, Brazos, Burleson, Falls, Henderson, Houston, Leon, Limestone, Madison, Milam, Nacogdoches, Rusk, Smith.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15963 C and for economic injury is 15964 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 22, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–11180 Filed 5–28–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08/78–0162]

Utah Ventures III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 08/08–0162 issued to Utah Ventures III, LP said license is hereby declared null and void.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2019–11192 Filed 5–28–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15960; California Disaster Number CA–00299 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 05/22/2019.

Incident: Severe Winter Storm.

Incident Period: 02/13/2019 through 02/15/2019.

DATES: Issued on 05/22/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Riverside

Contiguous Counties:

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for economic injury is 159600.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 22, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–11190 Filed 5–28–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10781]

Determination and Certification of Countries Not Cooperating Fully With United States Antiterrorism Efforts

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 13637, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Iran, Democratic People's Republic of Korea (DPRK, or North Korea), Syria, and Venezuela. This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

John J. Sullivan,

Deputy Secretary of State.

[FR Doc. 2019–11157 Filed 5–28–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Agency Actions on Proposed I–20/26/126 Carolina Crossroads Corridor Project in South Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal Agencies that are final. The actions relate to the I–20/26/126 Carolina Crossroads Corridor Project, located in Lexington and Richland Counties, South Carolina. This action grants FHWA approval of the project.

DATES: By this notice, FHWA is advising the public of a final agency action subject to 23 U.S.C. 139(l)(1). A claim seeking review of the Federal agency action on the highway project will be barred unless the claim is filed on or before October 28, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Emily O. Lawton, Division Administrator, Federal Highway Administration, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 1270, Columbia, South Carolina 29201, Telephone: (803) 765–5411, Email: *Emily.lawton@dot.gov.* The FHWA South Carolina Division's Office normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Time), Monday through Friday, except federal holidays. For South Carolina Department of Transportation (SCDOT): Chad C. Long, Director of Environmental Services, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina, 29201, Telephone: (803) 737–2314, Email: *Longcc@scdot.org.* The SCDOT's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Time), except South Carolina state holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing a Record of Decision (ROD) for the I–20/26/126 Carolina Crossroads Corridor Project in Richland and Lexington Counties, South Carolina. The Carolina Crossroads project would reconstruct the I–20/26 interchange, the I–26/126 interchange, and service interchanges in the project study area on I–20, I–26, and I–126. In addition, an additional travel lane would be added in each direction on I–26 from the Broad River Road interchange to just past the I–126 interchange. The project would improve mobility and enhance traffic operations by reducing existing traffic congestion within the I–20/26/126 corridor while accommodating future traffic needs. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Combined Final Environmental Impact Statement (FEIS)/Record of Decision (ROD) for the project, approved on May 2, 2019, and in other documents in the project records. The Combined FEIS/ROD and other documents in the project file are available by contacting the FHWA or SCDOT at the addresses above. The Combined FEIS/ROD along with referenced technical documents can also be viewed and downloaded from the project website at *http://www.scdot carolinacrossroads.com/* or viewed as the SCDOT Headquarters at 955 Park Street, Columbia, SC 29201.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Record of Decision (ROD) for the project and in other documents in the project file. The ROD and other documents in the project file are available by contacting FHWA or SCDOT at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Land and Water Conservation Fund (LWCF) Act [16 U.S.C. 4601–4604].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery

Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668d].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Uniform Relocation Assistance and Real Property Acquisition Act [42 U.S.C. 61]; American Indian Religious Freedom Act [42 U.S.C. 1996].

7. *Noise:* 23 U.S.C. 109(i) (Pub. L. 91–605), (Pub. L. 93–87).

8. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 402, Section 401, Section 319)]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency; E.O. 13186 Responsibilities of Federal Agencies to Protect Migratory Birds.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 20, 2019.

Emily O. Lawton,

Division Administrator, Columbia, South Carolina.

[FR Doc. 2019–11076 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of a Supplemental Draft Environmental Impact Statement for Proposed Transit Improvements in the Eastside Transit Corridor Phase 2, Eastern Portion of Los Angeles County, California

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (Metro) issue this Notice of Intent (NOI) to prepare a Supplemental Draft Environmental Impact Statement (EIS) for the Eastside Transit Corridor Phase 2 Project (Project) pursuant to the National Environmental Policy Act (NEPA).

The purpose of this notice is to alert interested parties regarding the intent to prepare the Supplemental Draft EIS, to provide information on the nature of the proposed Project, potential minimal operable segments, and possible alternatives, and to invite public participation in the EIS process. With this notice, FTA and Metro invite public comments on the scope of the Supplemental Draft EIS and announce public scoping meetings that will be conducted. Consistent with Executive Order 11988: Floodplain Management and Executive Order 11990: Protection of Wetlands, this NOI also serves as a notice to the public that one or more of the alternatives under consideration may affect floodplains and/or wetlands.

DATES: Written comments on the scope of the Supplemental Draft EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to Metro on or before July 15, 2019. An interagency scoping meeting will be held on June 10, 2019 at 3:00 p.m.–5:00 p.m. at Metro Headquarters One Gateway Plaza, Los Angeles, CA 90012, Gateway Plaza Conference Room, 3rd floor. See **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the Supplemental Draft EIS will be held on the following dates:

- Thursday, June 13, 2019 6:00 p.m.–8:00 p.m., Whittier Community Center, 7630 Washington Avenue, Whittier, CA 90602
- Monday, June 17, 2019 6:00 p.m.–8:00 p.m., Commerce Senior Citizens Center, 2555 Commerce Way, Commerce, CA 90040
- Wednesday, June 19, 2019 6:00 p.m.–8:00 p.m., 4th Street New Primary Center, 469 Amalia Avenue, Los Angeles, CA 90022
- Saturday, June 22, 2019, 10:00 a.m.–12:00 p.m., South El Monte Community Center, 1530 Central Avenue, South El Monte, CA 91733
- Monday, June 24, 2019, 6:00 p.m.–8:00 p.m., Quiet Cannon Banquet Center, 901 Via San Clemente, Montebello, CA 90640.
- Wednesday, June 26, 2019, 6:00 p.m.–8:00 p.m., Pio Pico Women's Club, 9214 Mines Avenue, Pico Rivera, CA 90660

The meeting facilities are accessible to persons with disabilities. Individuals who require special assistance, such as a sign language interpreter, to participate in the scoping meeting or scoping materials in alternate formats may contact Ms. Lillian De Loza Gutierrez, Community Relations Manager, Metro, at (213) 922–7479, or *delozagutierrezl@Metro.net* at least 72 hours prior to the meeting. Scoping materials will be available at the scoping meetings and on the Project website (*https://www.Metro.net/projects/eastside_phase2/*).

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent via mail to Ms. Jenny Cristales-Cevallos, Senior Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–6, Los Angeles, CA 90012, or via email at *cristalescevallosj@Metro.net.* The locations of the scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Nguyen, Environmental Protection Specialist, Federal Transit Administration, 888 South Figueroa Street, Suite 440, Los Angeles, CA 90017, phone (213) 202–3960, email *Mary.Nguyen@dot.gov.*

SUPPLEMENTARY INFORMATION: A Draft EIS was circulated for public review on August 22, 2014. Since that time, changes to the alternatives have occurred and additional studies have been conducted. Therefore, a

Supplemental Draft EIS will be prepared in accordance the requirements of NEPA and its implementing regulations and 23 Code of Federal Regulations (CFR) 771.130. Metro will also be preparing a Recirculated Environmental Impact Report (EIR) document jointly with the EIS to comply with the California Environmental Quality Act (CEQA).

The proposed Project would extend the Metro Gold Line, a light rail transit line (LRT), from its current terminus at Atlantic Station in the unincorporated area of East Los Angeles to eastern Los Angeles County. The extension would serve the cities and communities of Commerce, Montebello, Monterey Park, Pico Rivera, Rosemead, Santa Fe Springs, South El Monte, and Whittier, and unincorporated areas of Los Angeles County, which include East Los Angeles and West Whittier-Los Nietos.

The Supplemental Draft EIS will be prepared in accordance with the requirements of NEPA and its implementing regulations. Metro will also use the environmental document, in conjunction with the Recirculated Draft EIR to comply with CEQA.

Scoping

Scoping is the process of determining the scope, focus, and content of an EIS. FTA and Metro invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the Supplemental Draft EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives and the identification of any significant social, economic, or environmental issues relating to the alternatives.

NEPA ''scoping'' has specific and limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Purpose and Need for the Project

The Draft EIS/EIR indicated that the purpose of the Eastside Transit Corridor Phase 2 Project is to improve transit access and mobility by connecting communities of eastern Los Angeles County to Metro's regional transit system. The Draft EIS/EIR indicated that Project would serve the large number of transit-dependent and low-income populations in the project area and increase access to major employment centers, activity centers, and destinations in the project area and Los Angeles County. The Draft EIS/EIR included that the Project also aims to reduce travel times on local and regional transportation networks and offer a convenient and reliable transportation alternative to address increased travel demand and projected employment and population growth in eastern Los Angeles County. This information, in addition to the project Purpose and Need, will be updated as part of the Supplemental Draft EIS.

Mobility problems and potential improvements for this corridor have been well documented in many studies that are available from Metro's Records Management Department, including numerous Metro Red Line planning studies, *Eastside Transit Corridor Studies: Re-Evaluation Major Investment Study* (2000), the *Eastside Transit Corridor Phase 2 Final Alternatives Analysis Report* (2009), the *Eastside Transit Corridor Phase 2 Alternatives Analysis Addendum* (2009), *Eastside Transit Corridor Phase 2, Draft EIS/EIR* (2014), *Eastside Transit Corridor Phase 2, Technical Study* (2015), Southern California Association of Governments (SCAG) planning studies, the Metro Rapid Demonstration Project (2000), and in SCAG's Regional Transportation Plan (2004).

Project Location and Environmental Setting

The Eastside Transit Corridor Phase 2 Project is located in eastern Los Angeles County and is generally bounded by Pomona Boulevard and State Route 60 (SR 60) Freeway to the north, Peck Road and Painter Avenue to the east, Olympic and Washington Boulevards to the south, and Atlantic Boulevard to the west. The project area consists of portions of eight jurisdictions, including the cities of Commerce, Montebello, Monterey Park, Pico Rivera, Rosemead, Santa Fe Springs, South El Monte, Whittier and portions of unincorporated areas in Los Angeles County which include East Los Angeles and West Whittier-Los Nietos. A diverse mix of land uses are located within the project area, including single- and multi-family residences, commercial and retail uses, industrial development, parks and recreational uses including the Whittier Narrows Recreation Center, health and medical uses, educational institutions, flood control facilities, and vacant land.

The Project would extend the existing Metro Gold Line from 6.9 to approximately 16 miles, depending on the alternative, from its current terminus at Atlantic Station in the unincorporated area of East Los Angeles to eastern Los Angeles County. It would traverse densely populated, low-income, and heavily transit-dependent communities with major activity centers within the Gateway Cities and San Gabriel Valley subregions of Los Angeles County.

Alternatives

The project Alternatives Analysis (AA) was initiated in 2007 wherein 47 alternatives were evaluated. In January 2009, the Metro Board approved the AA and identified two build alternatives to be carried forward for environmental review. The project is identified in Metro's 2009 Long-Range Transportation Plan, as amended, and is a transit project funded by local tax measures, Measure R (approved by voters in November 2008) and Measure M (approved by voters in November 2016).

A Notice of Intent to prepare a Draft EIS/EIR was issued in 2010. The Draft EIS/EIR analyzed the two build alternatives—State Route 60 (SR 60) and Washington Boulevard—in addition to the No Build and Transportation Systems Management (TSM) Alternatives. To address technical issues regarding proximity to the Operating Industries, Inc. (OII) Superfund site and in close coordination with the United States Environmental Protection Agency (EPA), the SR 60 North Side Design Variation (SR 60 NSDV) was added as a design variation. A total of 24 agencies accepted the invitation to become a Participating Agency and EPA, United States Army Corps of Engineers (USACE), and Caltrans (as assigned by the Federal Highway Administration [FHWA]) requested to be Cooperating Agencies. Outreach efforts to agencies affiliated with the project included agency scoping meetings, participation in the Technical Advisory Committee (TAC), and 37 individual agency coordination meetings with EPA, USACE, Caltrans, Southern California

Edison (SCE), and Union Pacific Railroad. As part of the outreach program during the AA and Draft EIS/EIR phases, Metro also held over 300 meetings with a wide array of stakeholder groups.

The Draft EIS/EIR was released on August 22, 2014 for a public comment period of 60 days. In November 2014, the Metro Board approved carrying forward two build alternatives for further study: The SR 60 NSDV, referred to herein as the SR 60 Alternative, and the Washington Boulevard Alternative. Based on the volume and scope of comments received on the Draft EIS/EIR, the Board deferred the selection of a Locally Preferred Alternative (LPA) and determined that additional technical investigation, a Post Draft EIS/EIR Technical Study, would be needed to address major areas of concern raised by Cooperating Agencies, corridor cities and stakeholders for both build alternatives. The Metro Board also eliminated the Garfield Avenue aerial segment of the Washington Boulevard Alternative and directed staff to carry out additional technical work, including identifying a new north-south alignment to connect to the Washington Boulevard Alternative, and explore the feasibility of operating both the SR 60 and Washington Boulevard Alternatives.

Extensive coordination with Caltrans, EPA, USACE, CDFW and SCE occurred on the design of the SR 60 Alternative to address these agencies' respective comments on the Draft EIS/EIR throughout the technical investigation process. Some of the issues discussed with resource agencies throughout the technical study included: Addressing concerns related to the former OII Superfund site; minimizing impacts to adjacent developments such as the MarketPlace in Monterey Park; minimizing potential impacts to the ability to add high-occupancy vehicle (HOV) lanes to the SR 60 Freeway; avoiding impacts to the on and off-ramps at Paramount Boulevard; mitigating conflicts with transmission lines; and preserving the ability to develop a station and park and ride structure on Santa Anita Avenue.

The route planning process for the Washington Boulevard Alternative started with 27 potential connection options to Washington Boulevard. These route options were evaluated based on several factors including physical constraints, ridership, cost, travel time, access to major activity centers, economic development opportunities, transit-oriented communities potential, and consistency with community goals. Three north-south connection options were shared at community meetings held in March 2016, June 2016, and February 2017. The community provided extensive feedback on the Washington Boulevard Alternative north-south connection options. The feedback was instrumental in confirming Metro's understanding of key issues for each routing concept and in focusing the conceptual design studies. Based on the technical analysis, design refinements and feedback received from the community and key stakeholders, the Atlantic Boulevard below-grade option was recommended for Board approval as part of the new Washington Boulevard Alternative

In May 2017, the Metro Board received the findings of the Post Draft EIS/EIR Technical Study Report and decided to advance the No Build Alternative and the following build alternatives for environmental review:

- SR 60 Alternative (previously referred to as the SR 60 NSDV Alternative);
- Washington Boulevard Alternative with the Atlantic Boulevard below-grade option (referred to as the Washington Boulevard Alternative); and
- Combined Alternative, defined as full build out of the SR 60 and Washington Boulevard Alternatives.

The Post Draft EIS/EIR Technical Study Report may be found on the Eastside Transit Corridor Phase 2 Project webpage at: *https://www.Metro.net/projects/eastside_phase2/*).

Each build alternative proposes to develop an LRT facility with four to 10 stations, depending on the alternative, and identify transit-oriented community land use concepts and first/last mile pedestrian/bicycle connectivity opportunities associated with the proposed stations. The Project will also consider the development of minimal operable segments and ancillary facilities. A minimal operable segment is construction of a segment of the LRT route under a build alternative, which would be able to operate both as a stand-alone system and also include a maintenance and storage facility. Stakeholder coordination, design refinement, and impact assessment of the Project are ongoing. As a result, there will continue to be Project design iteration. As such, it is anticipated that the Supplemental Draft EIS document may include, but is not limited to, variations to station number and locations; options for vertical alignments; options for parking facilities; specific alignment refinements; ancillary improvements; and leveraged improvements in collaboration with Metro's local partners and betterments to address these issues. Therefore, interested parties are advised to stay informed and engaged with the numerous Project engagement and communication channels via the project website below.

No-Build Alternative: The No-Build Alternative would maintain existing transit service through the year 2042. No new transportation infrastructure would be built within the project area aside from projects currently under construction or funded for construction and operation by 2042 by Measure R or the recently approved Measure M sales tax. This alternative will include the highway and transit projects in the current Metro Long Range Transportation Plan and the 2035 SCAG Regional Transportation Plan. Potential modifications to the Metro bus network resulting from the Metro NextGen Bus Study and other transit planning efforts would be included.

SR 60 Alternative (previously known as the SR 60 NSDV Alternative): This build alternative, as evaluated in the Draft EIS/EIR, would extend the existing Metro Gold Line from the Atlantic Station to the city of South El Monte. Primarily, it is an aerial alignment that includes four aerial stations as described in the 2014 Draft EIS/EIR. Refinements to station locations or new stations may be considered. The SR 60 Alternative alignment would be located primarily along the southern side of SR 60 Freeway right-of-way (ROW), with the exception of a segment that passes near the OII Superfund Site in Monterey Park. To avoid potential impacts to the OII Site, the SR 60 Alternative alignment would transition to the north side of the SR 60 Freeway, approximately west of Greenwood Avenue, continue east within the Caltrans ROW, and then return to the south side of SR 60 Freeway, near Paramount Boulevard, where it would continue for the remainder of the alignment until its terminus in the City of South El Monte.

Washington Boulevard Alternative: This build alternative would extend the Metro Gold Line from the existing Atlantic Station in East Los Angeles to the City of Whittier. This Alternative includes six stations. Refinements to station locations or new stations may be considered. The configuration of the Alternative would vary, as it is proposed to transition from underground to aerial to at-grade along various portions of the alignment.

From the existing Atlantic Station, the alignment would transition from at-grade west of Woods Avenue to below-grade. A design option may include changing the existing Atlantic Station to a below-grade station. The alignment

would continue below-grade roughly following Atlantic Boulevard to Washington Boulevard. The alignment would remain at-grade along Washington Boulevard until just west of Lambert Road. Design options for potential aerial configurations along Washington Boulevard are also under consideration.

Combined Alternative: The Combined Alternative involves construction and operation of both the SR 60 and Washington Boulevard Alternatives and would require infrastructure and operational elements that would otherwise not be required if only one of the alternatives was operated as a ''stand alone'' line.

Stations, parking, minimal operating segments, ancillary facilities such as a maintenance and storage facility/job training center, traction power substations, and grade separation structures, tail tracks and storage tracks, track sidings and crossovers, track signalization, communication facilities, along the Project alignment would be part of each LRT alternative.

Probable Effects

The purpose of this EIS/EIR process is to study, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and Metro will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. The probable impacts will be determined as a part of project scoping. Unless further screening illuminates areas of possible impact, resource areas will be limited to those uncovered during scoping. Measures to avoid, minimize, and mitigate adverse impacts will also be identified and evaluated. Key environmental factors to be addressed include:

- Air Quality;
- Climate Change and Greenhouse Gases;
- Community & Neighborhood Impacts;
- Construction Impacts;
- Cumulative Impacts;
- Economic & Fiscal Impacts;
- Ecosystems/Biological Resources;
- Energy;
- Environmental Justice;
- Geotechnical/Subsurface/Seismic/Hazardous Materials;
- Growth Inducing Impacts;
- Historic, Archeological, Tribal Cultural Resources, and Paleontological Impacts;
- Land Use & Planning;
- Noise & Vibration;
- Parklands and Community Facilities;
- Real Estate & Acquisitions;
- Safety & Security;
- Transportation;
- Water Resources & Hydrology; and
- Visual & Aesthetics.

FTA Procedures

The regulations implementing NEPA require that FTA and Metro do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. In 2010, three agencies were asked and have accepted to be cooperating agencies: EPA, USACE, and Caltrans, as assigned by FHWA. A total of 24 agencies accepted the invitation to become a participating agency. An update to participating and cooperating agencies, with scoping materials appended, was sent to Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that did not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager, Ms. Jenny Cristales-Cevallos, Senior Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–6, Los Angeles, CA 90012 by mail, or via email at *cristalescevallosj@Metro.net.*

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on the Eastside Transit Corridor Phase 2 Project web page: *https://www.Metro.net/projects/eastside_phase2/*). The public involvement program includes a full range of activities including the project web page, development and distribution of project newsletters, and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the public involvement program.

The Supplemental EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/FHWA/Federal Railroad Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, cooperation and consultation with the Secretary of the Interior and Administrator of EPA and compliance with NEPA provisions of Federal transit laws (49 U.S.C. 5323(c)); the project-level air quality conformity regulations of EPA (40 CFR part 93); the Section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulations implementing Section 106 of the National Historic Preservation Act (36 CFR part 800); the regulations implementing Section 7 of the Endangered Species Act (50 CFR part 402); Section 4(f) of the Department of Transportation Act (23 CFR 774 and 49 U.S.C. 303); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands. FTA is considering combining the Final EIS and the Record of Decision pursuant to 23 U.S.C. 139(n)(2).

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of the environmental document is received before the document is printed, FTA and its project sponsors will distribute only electronic copies of the environmental document. At a minimum, a complete printed set of the environmental document will be available for review at the project sponsor's offices; an electronic copy of the complete environmental document and scoping materials will be available on the project website at *https://www.Metro.net/projects/eastside_phase2/.*

Edward Carranza, Jr.,

Deputy Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. 2019–11089 Filed 5–28–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0080]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SALT (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0080 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0080 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0080, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SALT is:

—*Intended Commercial Use of Vessel:* ''The boat will be chartered for recreational sailing. Their goal is to offer 1–2 week charters with a USCG licensed captain; they might offer shorter charters of 2–3 nights on occasions.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida'' (Base of Operations: Newport, RI)

—*Vessel Length and Type:* 56′ Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0080 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0080 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 * * *.

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11127 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0083]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel 2 DREAM (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0083 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0083 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0083, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel 2 DREAM is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, East Coast Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Amagansett, NY)

—*Vessel Length and Type:* 67′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0083 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0083 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11128 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0085]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel STRIKER RICH (Sailing Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on

vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0085 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0085 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0085, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STRIKER RICH is:

—*Intended Commercial use of Vessel:* ''Sport fishing/Charter Scuba Diving/Charter''
—*Geographic Region Including Base of Operations:* ''Massachusetts, Rhode Island, Connecticut, New York (Excluding New York Harbor), Florida'' (Base of Operations: Wakefield, RI)
—*Vessel Length and Type:* 44′ sailing vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0085 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0085 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: May 23, 2019.
By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11137 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0082]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DRAGONFLY (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0082 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search

MARAD–2019–0082 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0082, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DRAGONFLY is:

—*Intended Commercial Use of Vessel:* ''Captained charter cruises along the Chicago Lakefront''

—*Geographic Region Including Base of Operations:* ''Illinois'' (Base of Operations: Monroe Harbor, Chicago, IL)

—*Vessel Length and Type:* 37′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0082 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0082 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11134 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0079]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DELPHINIUS (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0079 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0079 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0079, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your

document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DELPHINIUS is:

—*Intended Commercial Use of Vessel:* ''Coastwise Charters 6 person maximum southern California coast. This vessel is unique in its construction and looks and will be ideal for production (movie) and Print advertisement work''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Channel Islands Harbor, CA)

—*Vessel Length and Type:* 43′ sailing monohull with auxiliary engine

The complete application is available for review identified in the DOT docket as MARAD–2019–0079 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0079 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11132 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0088]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RENAISSANCE (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0088 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0088 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0088, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RENAISSANCE is:

—*Intended Commercial Use of Vessel:* ''recreational charters''

—*Geographic Region Including Base of Operations:* ''Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey'' (Base of Operations: Fort Lauderdale, FL)

—*Vessel Length and Type:* 28′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0088 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0088 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *.

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11136 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0084]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DESTINY III (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0084 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0084 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0084, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DESTINY III is:

—Intended Commercial Use of Vessel: ''Captained day charters and multi day live aboard term charters for sailing.''

—Geographic Region Including Base of Operations: ''Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Connecticut, Massachusetts'' (Base of Operations: Florida Keys, FL)

—Vessel Length and Type: 46' sailing catamaran

The complete application is available for review identified in the DOT docket as MARAD–2019–0084 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0084 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 * * *.

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11133 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0086]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SURF RAIDER (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0086 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0086 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0086, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SURF RAIDER is:

—*Intended Commercial use of Vessel:* ''passenger transportation''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 40′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0086 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0086 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11138 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0081]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MC 1218TX (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0081 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0081 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0081, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MC 1218TX is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Sport fishing charters (fish caught are not sold commercially)''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Michigan, Ohio'' (Base of Operations: Saginaw Bay, MI)

—VESSEL LENGTH AND TYPE: 24′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0081 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of

MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0081 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *.

Dated: May 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–11135 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0085]

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted on August 6, 2014, by Mr. Donald Friedman to the National Highway Traffic Safety Administration's (NHTSA) Office of Defects Investigation (ODI). The petition requests that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the rollover crash performance of the model year (MY) 2010 Chevrolet Tahoe and similarly constructed General Motors (GM) vehicles. The petition alleges that the rollover side curtain air bag system in these vehicles is defectively designed and can allow second and third row occupants to be ejected in rollover crashes. In addition, the petition alleges that the side window glass, rear seat belts, and roof structure are defectively designed. After examination of the petition and available data relating to the rollover crash performance of the subject vehicles, NHTSA does not believe that a safety-related defect currently exists in the design of the rollover side curtain air bags in the MY 2010 Chevrolet Tahoe and other similarly designed Chevrolet Tahoe and GMC Yukon vehicles. The agency has accordingly denied the petition. The petition is hereinafter identified as DP15–004.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lee, Vehicle Defect Division C, Office of Defects Investigation, NHTSA, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: By letter dated August 6, 2014, Mr. Donald Friedman of Santa Barbara, CA, submitted a petition requesting that the agency investigate the rollover crash performance of the MY 2010 Chevrolet Tahoe. The petitioner alleges that the rollover side curtain air bag (RSCAB) system in the MY 2010 Chevrolet Tahoe and similarly constructed GM vehicles is defectively designed and can allow second and third row occupants to be ejected in rollover crashes when the RSCAB has deployed. The petitioner also broadly requested NHTSA's ODI to conduct an investigation of the ''structural and consumer expectation defects in millions of General Motors vehicles that result in severe injury and death.'' In support of these claims, the petitioner submitted a two-page summary of his investigation and analysis of a rollover crash involving a MY 2010 Chevrolet Tahoe in which a second row passenger was fatally ejected, a summons and complaint from an ensuing lawsuit against GM, an electronic data recorder (EDR) readout from the vehicle, and his rebuttal of various expert opinions offered by GM during its defense of the lawsuit.

The petitioner alleges the following defects in the Chevrolet Tahoe allow ejection of second and third row occupants in rollover crashes despite a fully deployed RSCAB:

- *Safety Belts:* The safety belts in the second seating row of the Chevrolet Tahoe failed to restrain an occupant and allowed that occupant's ejection.
- *Roof Strength:* The roof design fails to provide sufficient structural integrity for the occupant compartment and allows the side windows to fracture. The fractured side windows become ejection portals through which occupants are ejected.
- *Containment/Glazing:* The petitioner states that readily available window glazing technology that would prevent side window fractures in a rollover should have been used in the Chevrolet Tahoe.
- *Window Curtain Tethers:* The RSCAB design employed in the Chevrolet Tahoe did not incorporate tethers that would have prevented occupants from being ejected.

On August 20, 2011, a MY 2010 Chevrolet Tahoe traveling on a highway in McAllen, Texas, rolled over several times in a grassy median after being hit by another vehicle. Of the eight occupants riding in the Chevrolet Tahoe, three were ejected. A 72-year-old

female, who was riding in the second row center seat, died as a result of head injuries due to contacting the ground during the crash event. There were no other fatalities.

Although the petitioner claims the fatal occupant was wearing her 3-point seat belt based on forensic and other evidence, the police accident report and GM's analysis indicate she and the two other ejected occupants were not restrained at the time of the crash. Based on the available information, including a review of all forensic evidence provided in the petition, ODI cannot reasonably determine whether or not the fatal occupant was wearing her seat belt and that any potential defect in the seat belt system exists.

The petition also states that the vehicle's roof was defectively designed in that it did not have sufficient strength to protect the occupants in the rollover crash. No data was submitted in support of this allegation. Instead, the petitioner provided his own historical account of GM's purported resistance to, and deceptive conduct in opposition of, increased roof strength standards for passenger vehicles. ODI was unable to draw any conclusions of inference about potential defects from this material.

Mr. Friedman's petition similarly alleged that the side window design was defective because the glazing fractured during the crash and the window opening provided an exit path through which occupants could leave the vehicle during a rollover. Again, no data was provided in support of this conclusory allegation, and ODI is unable to determine if, or how, this material supports the commencement of a defect investigation by NHTSA.

The central allegation in the petition is that the side curtain air bags in the MY 2010 Chevrolet Tahoe are defectively designed. GM began installing RSCABs in the Chevrolet Tahoe and its other full-size and large SUV vehicles with optional or standard third row seating starting in, or around, MY 2007 production. GM also refers to the RSCABs as ''rollover-capable roof rail air bags.'' The RSCAB system in the MY 2007 to 2014 Chevrolet Tahoe and other GM SUVs includes a cushion/bag that covers the side windows from the A- to C-pillar (first and second row seats) and another smaller cushion covering the C- to D-pillar area (third row seat). The larger cushion is tethered to the A-pillar and the smaller cushion is tethered to the D-pillar.

According to NHTSA's report on ejection mitigation, the cushions and tethers in the MY 2007 (and newer) Chevrolet Tahoe appear to have been designed to the state of the art for the mid-to-late 2000's time period.[1] It states the Chevrolet Tahoe's cushion has sufficient size or coverage and stays inflated for several seconds. The RSCABs are typically tethered to the front and rearmost positions but not always. Some designs only have tethers at the A-pillar.

Starting on September 1, 2013, and with a four-year phase-in schedule, all new passenger cars and light trucks must comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 226, *Ejection Mitigation* (49 CFR 571.226). This standard is designed to reduce the occurrences of ejections of vehicle occupants in crashes, especially rollover crashes. According to GM, all Chevrolet Tahoe vehicles manufactured on or after September 1, 2014 were certified to FMVSS No. 226. Although the MY 2010 Chevrolet Tahoe at issue in the petition was not certified as meeting FMVSS No. 226, data evaluating the performance of the MY 2007 Chevrolet Tahoe and peer vehicle RSCABs collected during the development of that standard exists and is relevant to the petitioner's claims.

The ejection mitigation testing specified in FMVSS No. 226 involves impacting a head-form mass into a deployed RSCAB in four locations at each side window and at different impact speeds and at different times after deployment.[2] The test requires that the impactor mass not displace in excess of 100 mm at each impact location. ODI's review of NHTSA's test results for the second and third row windows showed the MY 2007 Chevrolet Tahoe does not stand out from the other MY 2005–2008 vehicle models tested.[3] The Chevrolet Tahoe performed better than other vehicles in some tests while it performed worse in other tests.

ODI also examined complaint, claim, and crash data relating to the petitioner's claims. ODI's consumer complaint database does not contain any complaints of occupant ejections in crashes in any MY 2007–2015 Chevrolet Tahoe (and its similar GMC Yukon) or other similar-vintage, full-size SUV vehicles equipped with RSCABs, so-called peer vehicles.[4] Several complaints reported being in rollover crashes but none reported a fatality or occupant ejection. Most of these reports also alleged the side curtain air bags did not deploy in the crash.

Early Warning Reporting (EWR) reports of death or injury incidents caused by an alleged defect were also examined by ODI. As of November 28, 2018, ODI received three ejection-related death reports on MY 2007–2015 Chevrolet Tahoe and GMC Yukon vehicles in GM's EWR data.

The first report states that a single-vehicle, single-occupant rollover crash resulted in the death of an unbelted driver. The RSCABs deployed in the MY 2015 Chevrolet Tahoe[5], which rolled over several times. The driver was ejected from the vehicle. ODI reviewed the EDR data in this vehicle and did not find any anomalies in the data. This incident involves an ejection, but may be distinguished from the petitioner's claim, which alleges that the rear seat occupants were ejected.

The second report, like the first, was a single-vehicle, single-occupant rollover crash that resulted in an ejection death of an unbelted driver of a MY 2007 Chevrolet Tahoe. However, in this crash, the RSCABs allegedly did not deploy. While a non-deployment is a matter of concern, the defect alleged by Mr. Friedman's petition does not involve a failure to deploy.

The third report indicates a media reporter contacting a police department about ''two rollover police fatalities'' involving MY 2009 Chevrolet Tahoe vehicles. No other details were included in this report.

ODI conducted a review of crash data in evaluating this petition. NHTSA's Fatality Analysis Reporting System (FARS) tracks all fatal crashes involving motor vehicles occurring on public roadways in the U.S. An analysis of fatal crashes of full-size SUVs, where the vehicle rolled over, indicates the fatal occupant ejection rate of the MY 2007–2014 Chevrolet Tahoe and GMC Yukon vehicles (subject vehicles) does not stand out from the similar-vintage peer vehicles. The Chevrolet Tahoe and GMC Yukon had fatal ejection rates of 15.2 and 6.1 per million registered vehicles, respectively, while five peer vehicle models had rates higher than the Chevrolet Tahoe, nine models had rates lower than the GMC Yukon, and four models had rates that were between the Chevrolet Tahoe and GMC Yukon rates.

NHTSA's National Automotive Sampling System (NASS) has records of a sampling of crashes and an analysis that may include, among other things,

[1] ''FMVSS No. 226 Ejection Mitigation—Final Regulatory Impact Analysis,'' January 2011, NHTSA, pp 5, 19, and 139–143.

[2] Ibid, pp 11–21.

[3] Ibid, pp 25–29.

[4] Peer vehicles include 18 models: Audi Q7, Buick Enclave, Cadillac Escalade, Chevrolet Suburban, Chevrolet Traverse, GMC Acadia, Saturn Outlook, Dodge Durango, Jeep Commander, Ford Expedition, Lincoln Navigator, Mercedes-Benz GL-Class, Nissan Armada, Infiniti QX, Toyota Land Cruiser, Toyota Sequoia, Lexus GX, and Lexus LX.

[5] This vehicle was built in March 2014, prior to when the Tahoe was certified to FMVSS No. 226.

the number of vehicle rolls or turns. A review of this data did not show any fatalities in the subject and peer vehicles involved in rollover crashes. The NASS records contain four, non-fatal incidents involving the subject vehicles (two on Chevrolet Tahoe and two on GMC Yukon) and a total of 10 non-fatal incidents on the peer vehicles, again showing the subject vehicles did not stand out from the peers. The number of vehicle rolls ranged from one quarter turn to nine quarter turns.

Conclusion

Based on the information available at the present time, NHTSA does not believe that a safety-related defect currently exists in the design of the rollover side curtain air bags in the MY 2010 Chevrolet Tahoe and other similarly designed Chevrolet Tahoe and GMC Yukon vehicles. Therefore, the petition is denied. However, the agency will take further action if warranted by changing future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2019–11188 Filed 5–28–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On May 23, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. BRUNETTI, Luciano (a.k.a. ''BIFF TANNEN''; a.k.a. ''LUCHO''), Buenos Aires, Argentina; DOB 30 Aug 1988; POB Argentina; nationality Argentina; Gender Male; Passport AAC206993 (Argentina); D.N.I. 34142353 (Argentina) (individual) [SDNTK]. Designated pursuant to section 805(b)(3) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

2. FERRARI, Sergio David (a.k.a. ''Yagy''), Chivilcoy 3157 Piso 2 Depto D, Buenos Aires 1417, Argentina; Buenos Aires, Argentina; DOB 10 Feb 1968; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAA760416 (Argentina); D.N.I. 20010866 (Argentina); C.U.I.T. 20200108664 (Argentina) (individual) [SDNTK] (Linked To: SMILE TECHNOLOGIES S.A.; Linked To: SMILE PROPERTY & TRAVEL LTD; Linked To: SMILEWALLET S.A.S.; Linked To: SMILE TECHNOLOGIES CANADA LTD). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

3. FRENZEL, Conrado Adolfo (a.k.a. ''OTTO''), Buenos Aires, Argentina; DOB 07 Nov 1968; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAA435057 (Argentina); D.N.I. 20608046 (Argentina); C.U.I.T. 23206080469 (Argentina) (individual) [SDNTK] (Linked To: HIGH NUTRITION SOCIEDAD DE RESPONSABILIDAD LIMITADA; Linked To: B–WORK S.A.S.). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

4. PAURA, Jorge Alejandro (a.k.a. ''LARRY''), Buenos Aires, Argentina; DOB 31 Oct 1967; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAB376848 (Argentina); D.N.I. 18580686 (Argentina); C.U.I.T. 20185806864 (Argentina) (individual) [SDNTK] (Linked To: BAJER S.R.L.; Linked To: HIGH NUTRITION SOCIEDAD DE RESPONSABILIDAD LIMITADA). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

5. PAURA, Lucas Daniel, Buenos Aires, Argentina; DOB 04 Jan 1988; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport 33533978N (Argentina); D.N.I. 33533978 (Argentina) (individual) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

6. PEREZ SANTORO, Roberto Javier (a.k.a. PEREZ SANTORO, Javier), Buenos Aires, Argentina; DOB 10 Sep 1983; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAB523976 (Argentina); D.N.I. 30312556 (Argentina) (individual) [SDNTK] (Linked To: SMILE TECHNOLOGIES S.A.; Linked To: SMILE PROPERTY & TRAVEL LTD; Linked To: SMILEWALLET S.A.S.; Linked To: SMILEWALLET B.V.). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

7. TOMAGHELLI, Gaston, Buenos Aires, Argentina; DOB 17 Nov 1977; POB Argentina; nationality Argentina; Gender Male; Passport AAD186419 (Argentina); D.N.I. 26201272 (Argentina) (individual) [SDNTK] (Linked To: DTS CONSULTING S.A.). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

8. VIDEMATO, Santiago (a.k.a. ''JAMES DUGGAN''; a.k.a. ''RAMONA IBARRA''), Buenos Aires, Argentina; DOB 04 Oct 1983; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAA920679 (Argentina); D.N.I. 30555776 (Argentina) (individual) [SDNTK].

Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

Entities

1. BAJER S.R.L. (a.k.a. BAJER SOCIEDAD DE RESPONSABILIDAD LIMITADA), Nazarre 3336, Buenos Aires 1417, Argentina; C.U.I.T. 30712314156 (Argentina) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Jorge Alejandro PAURA, a foreign person designated pursuant to the Kingpin Act.

2. B–WORK S.A.S., Libertador del Av. 6025 piso 4, Buenos Aires, Argentina [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Conrado Adolfo FRENZEL, a foreign person designated pursuant to the Kingpin Act.

3. DTS CONSULTING S.A., 25 de Mayo 611, piso 4 of. 2, Buenos Aires, Argentina [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Gaston TOMAGHELLI, a foreign person designated pursuant to the Kingpin Act.

4. GOLDPHARMA DRUG TRAFFICKING & MONEY LAUNDERING ORGANIZATION (a.k.a. GOLDPHARMA DRUG TRAFFICKING AND MONEY LAUNDERING ORGANIZATION), Buenos Aires, Argentina [SDNTK]. Identified as a significant foreign narcotics trafficker pursuant to section 805(b)(1) of the Kingpin Act, 21 U.S.C. 1904(b)(1).

5. HIGH NUTRITION SOCIEDAD DE RESPONSABILIDAD LIMITADA (a.k.a. HIGH NUTRITION S.R.L.), Adolfo Carranza 2216, Buenos Aires, Argentina [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Jorge Alejandro PAURA, a foreign person designated pursuant to the Kingpin Act.

6. LA FLORIDA INVESTMENTS GROUP LLC, Sunny Isles, FL, United States; Registration ID L12000070773 (United States) [SDNTK]. Property within the United States that is owned or controlled by Jorge Alejandro PAURA and Conrado Adolfo FRENZEL, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

7. OYSTER INVESTMENTS LLC, Lewes, DE, United States; 1250 S Miami Ave, Unit 1004, Miami, FL, United States; 1250 S Miami Ave, Unit 1603, Miami, FL, United States; 170 SE 14 St, Unit 1606, Miami, FL, United States; 170 SE 14 St, Unit 2405, Miami, FL, United States; File Number 5277495 (United States) [SDNTK]. Property within the United States that is owned or controlled by Gaston TOMAGHELLI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

8. SMILE PROPERTY & TRAVEL LTD (a.k.a. QUARTIERLATINAPARTMENTS; a.k.a. SMILE BITCARD; a.k.a. SMILE PROPERTY AND TRAVEL LTD), Flat 1 73a White Lion Street, Islington, London N1 9PF, United Kingdom; 72 High Street Haslemere, Surrey GU27 2LA, United Kingdom; website *quartierlatinapartments.com;* alt. Website *smilebitcard.com;* Company Number 08220547 (United Kingdom) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Sergio David FERRARI and Roberto Javier PEREZ SANTORO, foreign persons designated pursuant to the Kingpin Act.

9. SMILE PROPERTY & TRAVEL LTD. (a.k.a. SMILE PROPERTY AND TRAVEL LTD.), San Antonio, TX, United States; Tax ID No. 32066912794 (United States) [SDNTK]. Property within the United States that is owned or controlled by Sergio David FERRARI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

10. SMILE TECHNOLOGIES CANADA LTD (a.k.a. SMILE TECHNOLOGIES CANADA LIMITED; a.k.a. SMILE WALLET; a.k.a. SMILETRAVELS; a.k.a. SMILEWALLET; a.k.a. SWEET APARTMENTS), 5825 Tiz Road, Mississauga, Ontario L5N0B6, Canada; 731 States Street, Mississauga, Ontario L5R 0B6, Canada; 2 Robert Speck Parkway, 7th Floor, Mississauga, Ontario L4Z 1H8, Canada; website *www.smiletraveltours.com;* alt. Website *www.sweetaparts.com;* Company Number 2592364 (Canada); MSB Registration Number M18867067 (Canada) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Sergio David FERRARI, a foreign person designated pursuant to the Kingpin Act.

11. SMILE TECHNOLOGIES S.A. (a.k.a. SMILE PAYMENTS; a.k.a. SMILE WALLET LIMITED; a.k.a. SMILE WALLET LTD), Avenida Chivilcoy 3157, piso 2, departamento D, Buenos Aires, Argentina; website *www.smiletechnologies.com.ar;* alt. Website *smilepayments.com;* C.U.I.T. 30715339176 (Argentina) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Sergio David FERRARI and Roberto Javier PEREZ SANTORO, foreign persons designated pursuant to the Kingpin Act.

12. SMILE TECHNOLOGIES S.A. LLC, San Antonio, TX, United States; Tax ID No. 32066912711 (United States) [SDNTK]. Property within the United States that is owned or controlled by Sergio David FERRARI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

13. SMILEPAYMENTS, LLC, Wilmington, DE, United States; File Number 5736292 (United States) [SDNTK]. Property within the United States that is owned or controlled by Sergio David FERRARI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

14. SMILEWALLET B.V., Herengracht 420, Amsterdam 1017BZ, Netherlands; website *www.smilewallet.com;* Chamber of Commerce Number 70004676 (Netherlands); RSIN 858100034 (Netherlands) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Roberto Javier PEREZ SANTORO, a foreign person designated pursuant to the Kingpin Act.

15. SMILEWALLET S.A.S., CR 15 #146 29 Casa 1, Bogota, DC, Colombia; NIT #9011450176 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Sergio David FERRARI and Roberto Javier PEREZ SANTORO, foreign persons designated pursuant to the Kingpin Act.

16. SMILEWALLET, LLC, San Antonio, TX, United States; Tax ID No. 32065536529 (United States) [SDNTK]. Property within the United States that is owned or controlled by Sergio David FERRARI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

17. WATER HILL CORP., Miami, FL, United States; Identification Number P16000064887 (United States) [SDNTK]. Property within the United States that is owned or controlled by Gaston TOMAGHELI, and therefore is blocked pursuant to section 805(b) of the Kingpin Act, 21 U.S.C. 1904(b).

Dated: May 23, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–11146 Filed 5–28–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans' Family, Caregiver and Survivor Advisory Committee

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Veterans' Family, Caregiver and Survivor Advisory Committee (hereinafter in this section referred to as ''the Committee'').

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on July 1, 2019.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at *vaadvisorycmte@va.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Betty Moseley Brown, Designated

Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420, telephone (210) 392–2505 or via email at *Betty.MoseleyBrown@va.gov*.

SUPPLEMENTARY INFORMATION: The Veterans' Family, Caregiver, and Survivor Advisory Committee was established to advise the Secretary of VA on issues related to:

(1) Veterans' families, caregivers, and survivors across all generations, relationships, and Veteran status;

(2) The use of VA care, benefits and memorial services by Veteran's families, caregivers, and survivors, and possible adjustments to such care, benefits and memorial services;

(3) Veterans' family, caregiver, and survivor experiences, and VA policies, regulations, and administrative requirements related to the transition of Service members from the Department of Defense to enrollment in VA that impact Veteran's families, caregivers, and survivors; and

(4) Factors that influence access to quality of, and accountability for services and benefits for Veterans' families, caregivers, and survivors.

The Committee responsibilities include:

(1) Advising the Secretary on how VA can assist and represent Veterans' families, caregivers, and survivors, including recommendations regarding expanding services and benefits to Veterans' family members, caregivers, and survivors who are not currently served by VA, and related policy. Administrative, legislative, and/or regulatory actions.

(2) Advising the Secretary on incorporating lessons learned from current, and previous, successful family research and outreach efforts that measure the impact of provided care and benefits services on Veterans' family, caregivers, and/or survivors;

(3) Advising the Secretary on collaborating with family support programs within VA and engaging with other VA and non-VA advisory committees focused on specific demographics of Veterans and their families, caregivers, and survivors;

(4) Advising the Secretary on working with interagency, intergovernmental, private/non-profit, community, and faith-based organizations to identify and address gaps in services;

(5) Advising the Secretary on utilizing journey mapping or other means to depict the experience life cycle of families, caregivers, and survivors of Veterans to create a more holistic understanding of important life cycle events, moments that matter, and their impacts, and to ensure accountability;

(6) Advising the Secretary on Veterans' family, caregiver, and survivor experiences, and the impact of VA policies, regulations, and administrative requirements related to the transition of Service members from the Department of Defense to the enrollment of Veterans;

(7) Advising the Secretary on integrating Veterans' families, caregivers, and survivors into key VA initiatives such as access to care, suicide prevention, and homelessness; and

(8) Providing such reports as the Committee deems necessary, but not less than one report a per year, to the Secretary, through the Chief Veterans Experience Officer, Veterans Experience Office to describe the Committee's activities, deliberations, and findings, which may include but are not limited to: (1) Identification of current challenges and recommendations for remediation related to access to care, benefits and memorial services of Veterans' families, caregivers, and survivors; and (2) identification of current best practices in care and benefits delivery to Veterans' families, caregivers, and survivors, and the impact on such best practices.

Authority: The Committee was established by the directive of the Secretary of VA, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

Membership Criteria and Qualifications: VA is requesting nominations for Committee membership. The Committee is composed of up to 20 members and several ex-officio members. The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, from various sectors and organizations, including but not limited to:

(1) Veteran's family members, caregivers, and survivors;

(2) Veteran-focused organizations;

(3) Military history and academic communities;

(4) National Association of State Directors of Veterans Affairs;

(5) The Federal Executive Branch;

(6) Research experts and service providers; and

(7) Leaders of key stakeholder associations and organizations.

In accordance with the Committee Charter, the Secretary shall determine the number (up to 20), terms of service, and pay and allowances of Committee members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Committee member from additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above.

We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission:

Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership consideration described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive per diem and reimbursement for eligible travel expenses incurred.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 22, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–11070 Filed 5–28–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 240
Amendments to the Accelerated Filer and Large Accelerated Filer Definitions; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–85814; File No. S7–06–19]

RIN 3235–AM41

Amendments to the Accelerated Filer and Large Accelerated Filer Definitions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: We are proposing amendments to the accelerated filer and large accelerated filer definitions to promote capital formation for smaller reporting issuers, by more appropriately tailoring the types of issuers that are included in the categories of accelerated and large accelerated filers and revising the transition thresholds for accelerated and large accelerated filers. The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than $100 million in the most recent fiscal year for which audited financial statements are available. In addition, the proposed amendments would increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from $50 million to $60 million and for exiting large accelerated filer status from $500 million to $560 million. Finally, the proposed amendments would add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status. As a result of the amendments, certain low-revenue issuers would not be required to have their assessment of the effectiveness of internal control over financial reporting attested to, and reported on, by an independent auditor, although they would continue to be required to make such assessments and to establish and maintain the effectiveness of their internal control over financial reporting.

DATES: Comments should be received on or before July 29, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use our internet comment form (*https://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–06–19 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on our internet website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in our 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. 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.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel, or Jennifer Riegel, Special Counsel, in the Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 12b–2 (''Rule 12b–2'') under the Securities Exchange Act of 1934 (''Exchange Act'').[1]

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I. Introduction

A. Background

In 2002, the Commission introduced a reporting regime that categorized issuers subject to the Exchange Act reporting requirements as non-accelerated, accelerated, and large accelerated filers.[2] Under this regime, accelerated

[1] 15 U.S.C. 78a *et seq.*

[2] *See Acceleration of Periodic Report Filing Dates and Disclosure Concerning website Access to Reports,* Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480 (Sept. 16, 2002)]. The definitions in Rule 12b–2 are not enumerated, including the definition of ''accelerated filer and large accelerated filer.'' The paragraphs under the ''accelerated filer and large accelerated filer'' definition, however, are enumerated. Paragraph (1) defines ''accelerated filer,'' paragraph (2) defines ''large accelerated filer,'' and paragraph (3) discusses entering and exiting accelerated filer and large accelerated filer status. Also, although Rule 12b–2 defines the terms ''accelerated filer'' and ''large accelerated filer,'' it does not define the term ''non-accelerated filer.''

and large accelerated filers are subject to shorter filing deadlines for quarterly and annual reports and are subject to some disclosure [3] and other requirements that do not apply to non-accelerated filers. The only difference between the requirements for accelerated and large accelerated filers is that large accelerated filers are subject to a filing deadline for their annual reports on Form 10–K that is 15 days shorter than the deadline for accelerated filers.[4]

A significant requirement that applies to accelerated and large accelerated filers, but not to non-accelerated filers, is the requirement that an issuer's independent auditor must attest to, and report on, management's assessment of the effectiveness of the issuer's internal control over financial reporting (''ICFR'').[5] Section 404(a) of the Sarbanes-Oxley Act (''SOX'') [6] requires almost all issuers, including smaller reporting companies (''SRCs''), that file reports pursuant to Exchange Act Section 13(a) or 15(d) to establish and maintain ICFR and have their management assess the effectiveness of their ICFR.[7] In addition, SOX Section 404(b) [8] requires those issuers to have the independent accounting firm that prepares or issues their financial statement audit report attest to, and report on, management's assessment of the effectiveness of their ICFR (''ICFR auditor attestation'').[9] SOX Section 404(c),[10] however, exempts from the ICFR auditor attestation requirement issuers that are neither large accelerated nor accelerated filers. Congress introduced the ICFR auditor attestation requirement as part of a package of regulations intended to improve the accuracy and reliability of corporate disclosures.[11] Although there are benefits to the ICFR auditor attestation requirement, there are also costs and burdens, which we discuss in more detail below.[12]

Initially, the categories of issuers under the accelerated and large accelerated filer reporting regime existed separately from categories that the Commission created to provide regulatory relief to smaller entities.[13] However, in 2007, when the Commission combined its separate disclosure regime for small business issuers with the regime for larger issuers, it attempted to align the SRC and non-accelerated filer categories, to the extent feasible, to avoid unnecessary complexity.[14] As a result, an SRC generally was not an accelerated or large accelerated filer and did not have to comply with the accelerated or large accelerated filing deadlines or the ICFR auditor attestation requirement.[15]

This alignment changed in June 2018 when the Commission adopted amendments [16] to the SRC definition [17] to expand the number of issuers that qualify for scaled disclosure accommodations. The revised SRC definition allows an issuer to use either a public float [18] test or a revenue test (''SRC revenue test'') to determine whether it is an SRC. The amendments increased the threshold in the public float test for an issuer to initially qualify as an SRC from less than $75 million to less than $250 million.[19] The Commission also expanded the revenue test to include issuers with annual revenues [20] of less than $100 million if they have no public float or a public float of less than $700 million.[21] Before the amendments, the revenue test in the SRC definition applied only to issuers with no public float. In the SRC Adopting Release, the Commission estimated that raising the threshold used in the public float test and expanding the revenue test in the SRC definition would result in an additional 966 issuers being eligible for SRC status in the first year under the new definition.[22] The Commission intended the amendments to promote capital formation for smaller reporting issuers by reducing compliance costs for the newly-eligible SRCs while maintaining appropriate investor protections.[23]

In conjunction with these amendments, the Commission also revised the accelerated filer and large accelerated filer definitions in Rule 12b-2 to remove the condition that, for an issuer to be an accelerated filer or a large accelerated filer, it must not be eligible to use the SRC accommodations.[24] One result of these amendments is that some issuers now are categorized as both SRCs and accelerated or large accelerated filers.[25]

See paragraphs (1) and (2) under the ''accelerated filer and large accelerated filer'' definition in Rule 12b–2. If an issuer does not meet the definition of accelerated filer or large accelerated filer, it is considered a non-accelerated filer. *See* Table 1 in Section II.C. below for the definitions of ''accelerated filer'' and ''large accelerated filer.''

[3] Accelerated and large accelerated filers are required to provide the disclosure required by Item 1B of 17 CFR 249.310 (''Form 10–K'') and Item 4A of 17 CFR 249.220f (''Form 20–F'') about unresolved staff comments on their periodic and/or current reports. Also, accelerated and large accelerated filers are required to provide certain disclosures about whether they make filings available on or through their internet website. *See* 17 CFR 229.101(e)(4).

[4] *See* Table 6 in Section III.B.1 below.

[5] *See* 17 CFR 240.13a–15(f) and 17 CFR 240.15d–15(f) (defining ICFR).

[6] 15 U.S.C. 7262(a).

[7] *See* 17 CFR 240.13a–15 and 17 CFR 240.15d–15.

[8] 15 U.S.C. 7262(b).

[9] *See* 15 U.S.C. 7262(b).

[10] *See* 15 U.S.C. 7262(c).

[11] *See* 15 U.S.C. 7262 (SOX's subheading is, ''AN ACT To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.'').

[12] *See* Section III.C below.

[13] *See, e.g., Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (''SRC Regulatory Relief Release'') (discussing small business issuers and Regulation S–B).

[14] *See id.*

[15] In addition, an SRC also was not required to provide the disclosure required by Item 1B of Form 10–K, and a non-accelerated filer was not required to provide the disclosure required by Item 4A of Form 20–F about unresolved staff comments on its periodic and/or current reports. Further, non-accelerated filers were not required to provide certain disclosures about whether they make filings available on or through their internet website. *See* 17 CFR 229.101(e)(4).

[16] *See Smaller Reporting Company Definition,* Release No. 33–10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)] (''SRC Adopting Release'').

[17] *See* 17 CFR 229.10(f)(1)(i), 17 CFR 230.405 (''Rule 405''), and Rule 12b–2.

[18] Public float is defined in paragraph (3)(i)(A) of the SRC definition in Rule 12b–2, which states that public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity. *See also* 17 CFR 229.10(f)(2)(i)(A) and Rule 405. An entity with no public float because, for example, it has equity securities outstanding but is not trading in any public trading market would not be able to qualify on the basis of a public float test.

[19] To avoid situations where an issuer frequently enters and exits SRC status, each test includes two thresholds—one for initially determining whether an issuer qualifies as an SRC and a subsequent, lower threshold for issuers that did not initially qualify as an SRC.

[20] Annual revenues are measured as of the most recently completed fiscal year for which audited financials are available. *See* 17 CFR 229.10(f)(2)(i)(B), Rule 405, and Rule 12b–2.

[21] *See* 17 CFR 229.10(f)(1), Rule 405, and Rule 12b–2. The prior revenue test included issuers with no public float and annual revenues of less than $50 million. *See* SRC Adopting Release, note 16 above, at 31995. The lower transition thresholds under the revenue test for an issuer that did not initially qualify as an SRC were revised from less than $40 million of annual revenues and no public float to less than $80 million of annual revenues and either no public float or a public float of less than $560 million. *See* Item 17 CFR 229.10(f)(2)(iii)(B), Rule 405, and Rule 12b–2.

[22] SRC Adopting Release, note 16 above, at 32005.

[23] *Id.* at 31992.

[24] This amendment, among other things, preserved the existing thresholds in those definitions and did not change the number of issuers subject to the ICFR auditor attestation requirement.

[25] Although rare, under our existing rules, some issuers that meet the large accelerated filer definition may be eligible to be an SRC because of the expanded revenue test in the SRC definition. An issuer is eligible to be an SRC and a large accelerated filer if it: (1) Previously qualified as a large accelerated filer because its public float was $700 million or more; (2) its revenues for the most recent fiscal year were less than $100 million; and

Continued

These issuers have some, but not all, of the benefits of scaled regulation and, in particular, are required to comply with earlier filing deadlines for annual and quarterly reports and the ICFR auditor attestation requirement.

At the time of the SRC Adopting Release, as noted in that release, the Chairman directed the staff to formulate recommendations to the Commission for possible rule amendments that, if adopted, would have the effect of reducing the number of issuers that qualify as accelerated filers to promote capital formation by reducing compliance costs for certain registrants, while maintaining appropriate investor protections.[26] As part of the staff's consideration of possible amendments to recommend, the Chairman directed the staff to consider, among other things, the historical and current relationship between the SRC and accelerated filer definitions.

B. Summary of the Proposed Amendments

We are proposing to amend the accelerated and large accelerated filer definitions in Rule 12b-2 to exclude any issuer that is eligible to be an SRC under the SRC revenue test. The effect of this proposal would be that such an issuer would not be subject to accelerated or large accelerated filing deadlines for its annual and quarterly reports or to the ICFR auditor attestation requirement.[27] Other issuers that are eligible to be SRCs but are not excluded from the accelerated or large accelerated filer definition would need to satisfy all of the requirements applicable to an accelerated or large accelerated filer, including the ICFR auditor attestation requirement.

Additionally, we are proposing to revise the transition provisions set forth in the ''Entering and exiting accelerated filer and large accelerated filer status'' section applicable to the Rule 12b-2 accelerated and large accelerated filer definitions. The proposed amendments would revise the public float transition threshold for accelerated and large accelerated filers to become a non-accelerated filer from $50 million to $60 million. Also, the proposed amendments would increase the exit threshold in the large accelerated filer transition provision from $500 million to $560 million in public float to align the SRC and large accelerated filer transition thresholds. Finally, the proposed amendments would allow an accelerated or a large accelerated filer to become a non-accelerated filer if it becomes eligible to be an SRC under the SRC revenue test.

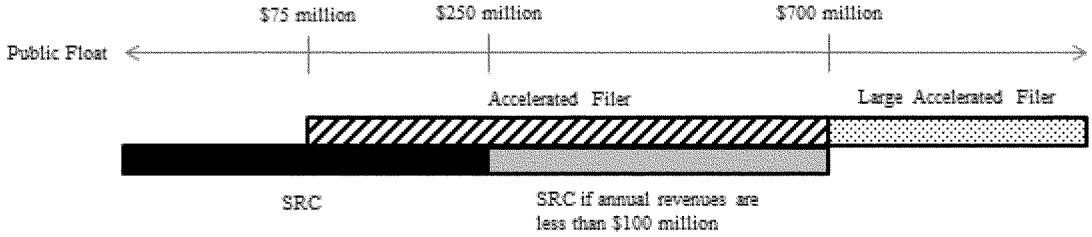
II. Discussion of the Proposed Amendments

A. Historical and Current Relationship Between the SRC and Accelerated and Large Accelerated Filer Definitions

Prior to the SRC amendments, the SRC category of filers generally did not overlap with either the accelerated or large accelerated filer categories.[28] In addition, the accelerated and large accelerated filer definitions explicitly excluded any issuer eligible to use the SRC accommodations. Now, however, as illustrated in Figure 1 of this section, because the public float tests in the SRC and accelerated filer definitions partially overlap, and the accelerated and large accelerated filer definitions no longer specifically exclude an issuer that is eligible to be an SRC, an issuer meeting the accelerated filer definition [29] will be both an SRC and an accelerated filer [30] if it has:

- A public float of $75 million or more, but less than $250 million, regardless of annual revenues; or
- Less than $100 million in annual revenues, and a public float of $250 million or more, but less than $700 million.

Figure 1. Definitions of SRC, Accelerated Filer, and Large Accelerated Filer after the SRC Amendments



When the Commission proposed the amendments to the SRC definition,[31] it did not propose to exclude the newly-eligible SRCs from the accelerated or large accelerated filer definitions but solicited comment on this point. Some

(3) its public float as of the end of the most recent second quarter is less than $560 million (or, for the first year after the new SRC rules are effective, is less than $700 million), such that it is eligible to be an SRC, but does not fall below the $500 million transition threshold necessary to exit large accelerated filer status. *See* SRC Adopting Release, note 16 above, at 31994 n.31 and 32001 n.128. We are proposing to revise the ''large accelerated filer'' definition so that an issuer that would be eligible to be an SRC under the SRC revenue test would not also qualify as a large accelerated filer.

[26] *See* SRC Adopting Release, note 16 above, at 32001.

[27] The issuer also would not have to provide the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on its periodic and/or current reports or the disclosure required by Item 101(e)(4) of Regulation S–K about whether it makes filings available on or through its internet website. *See* 17 CFR 229.101(e)(4).

[28] *See* SRC Adopting Release, note 16 above, at 32001.

[29] As discussed in Section II.C below, the existing conditions for qualifying as an accelerated filer are that an issuer: (1) Had an aggregate worldwide public float of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter; (2) has been subject to the requirements of 15 U.S.C. 78m (Exchange Act Section 13(a)) or 15 U.S.C. 78o(d) (Exchange Act Section 15(d)) for a period of at least twelve calendar months; and (3) has filed at least one annual report pursuant to those sections. For a large accelerated filer, conditions (2) and (3) are the same, but condition (1) is that an issuer had an aggregate worldwide public float of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter. Also, as discussed in note 25 above, some issuers that meet the ''large accelerated filer'' definition may be eligible to be an SRC.

[30] The thresholds provided below are based on the initial thresholds of each definition; however, due to the transition provisions of the accelerated and large accelerated filer definitions, additional issuers may also be both an SRC and an accelerated or large accelerated filer.

[31] *Amendments to Smaller Reporting Company Definition,* Release No. 33–10107 (June 27, 2016) [81 FR 43130 (July 1, 2016)] (''SRC Proposing Release'').

commenters recommended that the Commission increase the threshold in the accelerated filer definition to be consistent with changes to the SRC definition,[32] reduce compliance costs associated with the ICFR auditor attestation requirement,[33] and maintain uniformity across the rules.[34]

B. ICFR Requirements

Issuer obligations with respect to internal accounting controls and ICFR derive primarily from the Foreign Corrupt Practices Act (''FCPA''), which added Section 13(b)(2)(B) to the Exchange Act; [35] SOX Sections 302 [36] and 404(a); and related rules.[37] Exchange Act Section 13(b)(2)(B) requires every issuer that is required to file reports pursuant to Exchange Act Section 13(a) or 15(d) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for assets.[38] Additionally, Exchange Act Section 13(b)(2)(B) requires that the issuer's system of internal accounting controls provide reasonable assurances that access to assets is permitted only in accordance with management's general or specific authorization and that the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.[39]

Similarly, pursuant to SOX Section 302, the Commission adopted rules requiring the principal executive and financial officers of certain issuers filing reports pursuant to Exchange Act Section 13(a) or 15(d) to certify that, among other things, they are responsible for establishing and maintaining ICFR, have designed ICFR to ensure material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, and evaluated and reported on the effectiveness of the issuer's ICFR.[40] Also, pursuant to SOX Section 404(a), the Commission adopted rules requiring each annual report required by Exchange Act Section 13(a) or 15(d) to include a statement that it is management's responsibility to establish and maintain adequate ICFR and to provide management's assessment of the effectiveness of the issuer's ICFR.[41] Issuers must evaluate and disclose any change to their ICFR that occurred during each fiscal quarter.[42]

Although SOX Section 404 generally requires and directs the Commission to adopt rules regarding internal accounting controls and ICFR that apply to every issuer that is required to file reports pursuant to Exchange Act Section 13(a) or 15(d), RICs under Section 8 of the Investment Company Act of 1940 (''Investment Company Act'') [43] are specifically exempted from SOX Section 404 by SOX Section 405.[44] In addition, the Commission's rules implementing the FCPA and SOX Section 404 exempted other types of issuers, such as asset-backed securities (''ABS'') issuers, from the ICFR obligations.[45] The Commission also determined that foreign private issuers (''FPIs'') and Canadian multijurisdictional disclosure system (''MJDS'') issuers must have their management assess and report annually on the effectiveness of their ICFR as of the end of their fiscal year and evaluate and disclose any change in their ICFR that occurred during the period covered by the annual report.[46]

In addition to the responsibility of the issuer's management to establish and maintain an effective internal control structure and procedures for financial reporting, the independent accounting firm that prepares or issues a financial statement audit report also helps support effective ICFR. SOX Section 404(b) requires any issuer subject to the rules the Commission adopted related to SOX Section 404(a), other than an emerging growth company (''EGC''),[47] to

[32] *See, e.g.,* letters from Acorda Therapeutics, Inc. *et al.* (Aug. 23, 2016) (''Acorda, *et al.*''); Advanced Medical Technology Association (Aug. 20, 2016) (''AMTA''); Biotechnology Innovation Organization, (Aug. 30, 2016) (''BIO''); Calithera Biosciences (Aug. 8, 2016) (''Calithera''); CONNECT (Aug. 4, 2016) (''CONNECT''); Corporate Governance Coalition for Investor Value (Aug. 30, 2016) (''Coalition''); Council of State Bioscience Associations (Aug. 26, 2016) (''CSBA''); Independent Community Bankers of America (Aug. 29, 2016) (''ICBA''); The Dixie Group, Inc. (July 11, 2016) (''Dixie''); MidSouth Bancorp, Inc. (Aug. 24, 2016) (''MidSouth''); Nasdaq (Aug. 30, 2016) (''Nasdaq''); National Venture Capital Association (Aug. 25, 2016) (''NVCA''); NYSE Group (July 25, 2016) (''NYSE''); and Seneca Foods Corporation (Aug. 2, 2016) (''Seneca''). However, some commenters expressed concern about amending the public float thresholds. *See* letters from BDO USA, LLP (Aug. 29, 2016); Center for Audit Quality and Counsel of Institutional Investors. (Aug. 30, 2016) (''CAQ/CII''); CFA Institute (Aug. 30, 2016) (''CFA''); and Ernst & Young LLP (Sept. 8, 2016) (''EY''). References to comment letters in this release refer to comments on the SRC Proposing Release, available at *https://www.sec.gov/comments/s7-12-16/s71216.htm,* unless otherwise specified.

[33] *See, e.g.,* letters from Acorda, *et al.;* AMTA; BIO; Calithera; CONNECT; Coalition; CSBA; ICBA; MidSouth; Nasdaq; NVCA; NYSE; and Seneca.

[34] *See* BIO; Coalition; Nasdaq; NVCA; and NYSE.

[35] 15 U.S.C. 78m(b)(2)(B) (referring to ''internal accounting controls'' rather than ICFR).

[36] 15 U.S.C. 7241.

[37] *See* 17 CFR 229.308, 17 CFR 240.13a–15, 17 CFR 240.15d–15, Form 20–F, Form 40–F, 17 CFR 270.30a–2, and 17 CFR 270.30a–3.

[38] 15 U.S.C. 78m(b)(2)(B)(i)–(ii).

[39] 15 U.S.C. 78m(b)(2)(B)(iii)–(iv).

[40] *See* 17 CFR 240.13a–14 or 17 CFR 240.15d–14 (requiring certification) and 17 CFR 229.601(b)(31) (prescribing certification content).

[41] *See* 17 CFR 229.308, 17 CFR 240.13a–15, 17 CFR 240.15d–15, Item 15 of Form 20–F, and Certifications 4 and 5 of Form 40–F. Effective ICFR is designed to provide reasonable assurance that an issuer's financial disclosures are reliable and prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') or International Financial Reporting Standards (''IFRS''). *See* 17 CFR 240.13a–15(f) and 17 CFR 240.15d–15(f). Effective ICFR includes policies and procedures designed to maintain records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements. *See* 17 CFR 240.13a–15(f) and 17 CFR 240.15d–15(f). These controls can help prevent or detect financial misstatements, whether intentional or unintentional. *Id.*

[42] *See* 17 CFR 240.13a–15(d) and 17 CFR 240.15d–15(d). *See also* 17 CFR 229.308(c). A registered investment company (''RIC'') must disclose in each report on Form N–CSR any change in its ICFR that has materially affected, or is reasonably likely to materially affect, its ICFR. See Item 11(b) of Form N–CSR [17 CFR 249.331; 17 CFR 274.128].

[43] 15 U.S.C 80a–8.

[44] 15 U.S.C. 7263. Notwithstanding the exemption pursuant to SOX Section 405, RICs are required to provide the certifications pursuant to SOX Section 302 and to maintain ICFR. *See* 17 CFR 270.30a–2 and 270.30a–3; *see also Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,* Release No. 34–47986 (June 5, 2003) [68 FR 36635 (June 18, 2003)]. RICs that are management companies, other than small business investment companies, are also required to file a copy of their independent public accountant's report on internal controls. *See* Form N–CEN (17 CFR 274.101); *see also Investment Company Reporting Modernization,* Release No. IC–32314, notes 879–881 and accompanying text (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)].

Additionally, business development companies (''BDCs'') are subject to the rules adopted by the Commission to implement SOX Section 404. BDCs are a type of closed-end investment company that is not registered under the Investment Company Act and, therefore, not within the exemption provided by SOX Section 405.

[45] *See Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506, 1510 n.41 (Jan. 7, 2005)] (''ABS Release''). *See also* 17 CFR 240.13a–15(a) and 17 CFR 240.15d–15(a) and Instruction J to Form 10–K.

[46] *See* Items 15(b) and (d) of Form 20–F and Certifications 4 and 5 of Form 40–F.

[47] An EGC is defined as an issuer that had total annual gross revenues of less than $1.07 million during its most recently completed fiscal year. *See* Rule 405; Rule 12b–2; 15 U.S.C. 77b(a)(19); 15

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have the accounting firm that prepares or issues its financial statement audit report attest to, and report on, management's assessment of the effectiveness of the issuer's ICFR. Under the current Public Company Accounting Oversight Board (''PCAOB'') risk assessment standards,[48] the independent auditor for the ICFR attestation considers certain information that is similar to information it considers for purposes of the issuer's financial statement audit. SOX Section 404(c) exempts non-accelerated filers from SOX Section 404(b)'s ICFR auditor attestation requirement.

The ICFR auditor attestation requirement is intended to enhance the reliability of management's disclosure related to ICFR. It also may help an issuer identify and disclose a significant deficiency or material weakness in ICFR that had not been identified or properly characterized by management.[49] In response to the SRC Proposing Release, some commenters indicated that the ICFR auditor attestation requirement strengthens the quality and reliability of issuers' ICFR, which enhances investor protection.[50] At the same time, the ICFR auditor attestation requirement is associated with certain costs that may be significant, particularly for low-revenue issuers. In response to the SRC Proposing Release, several commenters indicated that this requirement is the most costly aspect of being an accelerated filer[51] and that audit fees and other costs associated with the ICFR auditor attestation requirement can divert capital from core business needs.[52] Some commenters asserted that these costs are especially burdensome for emerging and growing biotechnology issuers,[53] with a few of these commenters specifying that the costs of the requirement represent over $1 million of capital diversion from such issuers.[54]

C. Proposed Amendments To Exclude Low-Revenue SRCs From the Accelerated and Large Accelerated Filer Definitions

We are proposing amendments to revise the accelerated and large accelerated filer definitions to exclude from those definitions issuers that are eligible to be an SRC under the SRC revenue test. Permitting these issuers to avoid the burdens of being an accelerated or large accelerated filer may enhance their ability to preserve capital without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers. Additionally, the benefits of having those issuers comply with the accelerated and large accelerated filer requirements may be more limited than for other issuers. Further, the proposed amendments are targeted at issuers whose representation in public markets has decreased over the years, and may be a positive factor in the decision of additional companies to register their offering or a class of their securities, which would provide an increased level of transparency and investor protection with respect to those companies. As discussed below,[55] the number of issuers listed on major exchanges with market capitalizations below $700 million decreased by about 65%,[56] and the number of listed issuers with less than $100 million in revenue decreased by about 60% [57] from 1998 to 2017. The issuers targeted by the proposed amendments would not incur the cost of the ICFR attestation until they exceed the SRC revenue test.

Under the existing accelerated filer definition in Rule 12b–2, an issuer must satisfy three conditions to be an accelerated filer. First, the issuer must have a public float of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter. Second, the issuer must have been subject to the requirements of Exchange Act Section 13(a) or 15(d) for a period of at least twelve calendar months. Third, the issuer must have filed at least one annual report pursuant to those same Exchange Act sections. Similarly, to be a large accelerated filer, an issuer must meet the second and third conditions just described and have a public float of $700 million or more as of the same measurement date.[58] We are proposing to add a new condition to the definitions of accelerated filer and large accelerated filer that would exclude from those definitions an issuer eligible to be an SRC under the SRC revenue test.[59]

The table below summarizes the current and proposed conditions to be considered an accelerated and large accelerated filer under Rule 12b–2.

U.S.C. 78c(a)(80); and *Inflation Adjustments and Other Technical Amendments under Titles I and II of the JOBS Act,* Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

Similar to other issuers, BDCs that qualify as an EGC or as a non-accelerated filer are not subject to the auditor attestation requirement in SOX Section 404(b). Unlike the Commission's SRC definition, the statutory definition of EGC does not exclude BDCs. *See* 15 U.S.C. 78c(80). Given the existing regulatory regime for BDCs and the context of the Jumpstart Our Business Startups (''JOBS'') Act of 2012, Public Law 112–106, Sec. 103, 126 Stat. 306 (2012), we believe that BDCs can qualify as EGCs. BDCs invest in startup companies and EGCs for which they make available significant managerial experience, and are subject to many of the disclosure and other requirements from which Title I of the JOBS Act provides exemptions, including executive compensation disclosure, say-on-pay votes, management discussion and analysis, and SOX Section 404(b).

[48] *See* PCAOB Accounting Standard (''AS'') 2110, *Identifying and Assessing Risks of Material Misstatement,* paragraphs .18–.40.

[49] *See Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million* 97–99 and 102–104 (Apr. 2011) (''2011 SEC Staff Study''), available at *https://www.sec.gov/news/studies/2011/404bfloat-study.pdf.*

[50] *See, e.g.,* letters from CAQ, CFA, and Deloitte (Aug. 23, 2016).

[51] *See, e.g.,* letters from Acorda *et al.,* AMTA, BIO, Calithera, Coalition, CONNECT, CSBA, Dixie, and Seneca. One commenter estimated that it will spend more than $400,000 annually on compliance with SOX Section 404(b) upon expiration of its EGC status. *See* letter from Calithera. Another commenter estimated that relief from SOX Section 404(b) would result in a 35% reduction in compliance costs. *See* letter from Seneca.

[52] *See, e.g.,* letters from Acorda *et al.,* BIO, CSBA, ICBA, and NVCA. One commenter stated that expanding relief from the ICFR auditor attestation requirement to issuers with a public float of less than $250 million would encourage capital formation because the reduced audit and disclosure requirements may encourage companies that have been hesitant to go public to do so. *See* letter from ICBA (citing a 2005 ICBA study that estimated that audit fees for publicly held bank holding companies would drop dramatically—some by as much as 50%—if these companies were exempted from the ICFR auditor attestation requirement).

[53] *See, e.g.,* letters from Acorda *et al.,* BIO, CONNECT, CSBA, and Seneca.

[54] *See, e.g.,* letters from Acorda *et al.* and CONNECT.

[55] *See* Section III.C.1 below.

[56] This figure is based on staff analysis of data from the Center for Research in Security Prices database for December 1998 versus December 2018. The estimates exclude RICs and issuers of American depositary receipts (''ADRs'').

[57] This figure is based on staff analysis of data from Standard & Poor's Compustat and Center for Research in Security Prices databases for fiscal year 1998 versus fiscal year 2017. The estimates exclude RICs and issuers of ADRs.

[58] *See* the large accelerated filer definition in Rule 12b–2.

[59] *See* proposed subparagraph (1)(iv) of the definition of accelerated filer and proposed subparagraph (2)(iv) of the definition of large accelerated filer in Rule 12b–2.

TABLE 1—CURRENT AND PROPOSED ACCELERATED FILER AND LARGE ACCELERATED FILER CONDITIONS

Current accelerated filer conditions	Proposed accelerated filer conditions
The issuer has a public float of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter.	Same.
The issuer has been subject to the requirements of Exchange Act Section 13(a) or 15(d) for a period of at least twelve calendar months.	Same.
The issuer has filed at least one annual report pursuant Exchange Act Section 13(a) or 15(d).	Same.
	The issuer is not eligible to use the requirements for SRCs under the revenue test in paragraphs (2) or (3)(iii)(B), as applicable, of the ''smaller reporting company'' definition in Rule 12b–2.
Current large accelerated filer conditions	**Proposed large accelerated filer conditions**
The issuer has a public float of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter.	Same.
The issuer has been subject to the requirements of Exchange Act Section 13(a) or 15(d) for a period of at least twelve calendar months.	Same.
The issuer has filed at least one annual report pursuant Exchange Act Section 13(a) or 15(d).	Same.
	The issuer is not eligible to use the requirements for SRCs under the revenue test in paragraphs (2) or (3)(iii)(B), as applicable, of the ''smaller reporting company'' definition in Rule 12b–2.

The proposed new conditions would only be available to issuers that are eligible to be an SRC under the SRC revenue test.[60] Issuers that are eligible to be an SRC that have a public float between $75 million and $250 million [61] would be accelerated filers if their annual revenues are $100 million or more, and thus they would remain subject to all of the requirements applicable to accelerated filers. We are proposing to refer to ''paragraphs (2) or (3)(iii)(B), as applicable'' of the SRC definition in the proposed rule text instead of referring to the actual numerical thresholds specified in those paragraphs. We preliminarily believe that referring to the SRC definition would be the clearest and most efficient way to codify the requirement given that the thresholds could change in the future.

The SRC definition excludes ABS issuers, RICs, BDCs, and majority-owned subsidiaries of issuers that do not qualify as an SRC. ABS issuers are exempt from ICFR reporting obligations.[62] While RICs are also exempt from SOX Section 404,[63] BDCs are not exempt. BDCs and majority-owned subsidiaries of a non-SRC parent are subject to the ICFR auditor attestation requirement to the same extent as other accelerated and large accelerated filers. As a result, even if these issuers were to fall within the public float and revenue thresholds in the SRC revenue test, they cannot rely on the SRC revenue test because they are excluded from the SRC definition. We estimate that 28 BDCs would meet the same public float and revenue thresholds as the issuers affected by the proposed rules, which constitutes about 60% of the total number of BDCs.[64] We further estimate that one majority-owned subsidiary of a non-SRC parent may meet the same thresholds.

We considered potential amendments to the definition of accelerated filer and large accelerated filer that would specifically address BDCs. Unlike investors in low-revenue non-investment company issuers, investors in BDCs may place greater significance on the financial reporting of BDCs, many of which hold illiquid portfolio securities valued using level three inputs of the U.S. GAAP fair value hierarchy.[65] The SRC revenue test would not be meaningful for BDCs because BDCs prepare financial statements under Article 6 of Regulation S–X [66] and generally do not report revenue. Instead, BDCs report investment income (dividends, interest on securities, fee income, and other income) and realized and unrealized gains and losses on investments on their statements of operations.[67] RICs also prepare financial statements under Article 6 of Regulation S–X. Even though RICs are not subject to SOX Section 404, RICs are subject to an independent public accountant's report on internal controls requirement through Form N–CEN.[68] Expanding BDCs' ability to be considered non-accelerated filers, in contrast, would reduce auditor review of internal controls for a significant majority of BDCs. Accordingly, the proposed amendments to the definitions of accelerated and large accelerated filer do not specifically address BDCs.[69]

The tables below summarize the current and proposed relationships

[60] Under the proposed amendments, an FPI that qualifies as an SRC under the SRC revenue test and is eligible to use the scaled disclosure requirements available to SRCs would qualify for the exclusion under the accelerated filer definition. This position is consistent with past guidance we have provided to FPIs. *See Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (''2007 SRC Adopting Release'') (noting that an FPI may also qualify as an SRC and has the option to make filings on forms available to U.S. domestic issuers if it presents financial statements pursuant to U.S. GAAP).

[61] *See* paragraphs (1) and (3)(iii)(A) of the SRC definition in Rule 12b–2.

[62] *See* ABS Release, note 45 above, at 1501 n.41. *See also* Instruction J to Form 10–K.

[63] *See* note 44 above.

[64] *See* Section III.C.6.b below.

[65] *See Fair Value Measurement (Topic 820),* Financial Accounting Standards Board (''FASB'') Accounting Standards Update No. 2010–06 (Jan. 2010).

[66] 17 CFR 210.6–01 *et seq.*

[67] *See* 17 CFR 210.6–07.

[68] Form N–CEN requires that the report be based on the review, study, and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements for the reporting period. The report should disclose any material weaknesses in: (a) The accounting system; (b) system of internal accounting control; or (c) procedures for safeguarding securities which exist as of the end of the registrant's fiscal year. *See* Instruction 3 to Item G.1 of Form N–CEN.

[69] Although the proposed amendments do not specifically address BDCs, we are soliciting comment on whether alternative approaches would be appropriate and the relative costs and benefits of such alternatives.

between SRCs and non-accelerated and accelerated filers.[70]

TABLE 2—EXISTING RELATIONSHIPS BETWEEN SRCS AND NON-ACCELERATED AND ACCELERATED FILERS

Existing relationships between SRCs and non-accelerated and accelerated filers		
Status	Public float	Annual revenues
SRC and Non-Accelerated Filer	Less than $75 million	N/A.
SRC and Accelerated Filer	$75 million to less than $250 million	N/A.
	$250 million to less than $700 million	Less than $100 million.
Accelerated Filer (not SRC)	$250 million to less than $700 million	$100 million or more.

TABLE 3—PROPOSED RELATIONSHIPS BETWEEN SRCS AND NON-ACCELERATED AND ACCELERATED FILERS

Proposed relationships between SRCs and non-accelerated and accelerated filers		
Status	Public float	Annual revenues
SRC and Non-Accelerated Filer	Less than $75 million	N/A.
	$75 million to less than $700 million	Less than $100 million.
SRC and Accelerated Filer	$75 million to less than $250 million	$100 million or more.
Accelerated Filer (not SRC)	$250 million to less than $700 million	$100 million or more.

The proposed amendments would increase the number of issuers that are exempt from the ICFR auditor attestation requirement by increasing the number of non-accelerated filers. Although the proposed amendments could, in some cases, result in investors receiving less or different disclosure about material weaknesses in ICFR at low-revenue SRCs than under our current rules, based on our experience with these matters, including in the cases of EGCs, SRCs, and other smaller reporting issuers, we believe it is unlikely there would be a significant effect on the ability of investors to make informed investment decisions based on the financial reporting of those issuers. A non-accelerated filer that meets the SRC revenue test would remain subject to many of the same obligations as accelerated and large accelerated filers with respect to ICFR, including the requirements for establishing, maintaining, and assessing the effectiveness of ICFR and for management to assess internal controls.

Additionally, pursuant to the PCAOB's recently adopted risk assessment standards in financial statement audits, in many cases auditors are testing operating effectiveness of certain internal controls even if they are not performing an integrated audit. For instance, an auditor may rely on internal controls to reduce substantive testing in the financial statement audit. To rely on internal controls, the auditor must obtain evidence that the controls selected for testing are effectively designed and operating effectively during the entire period of reliance.[71] Also, an auditor must test the controls related to each relevant financial statement assertion for which substantive procedures alone cannot provide sufficient appropriate audit evidence.[72]

The proposed amendments would not relieve an independent auditor of its obligation to consider ICFR in the performance of its financial statement audit of an issuer, if applicable, regardless of whether the issuer is subject to the ICFR auditor attestation requirement, as is the case today with respect to issuers that are non-accelerated filers.[73] For example, the risk assessment requirement in a financial statement audit is similar to that in an ICFR attestation audit. In a financial statement audit, the auditor is required to identify and assess the risks of material misstatements. The auditor is, therefore, required to ''obtain a sufficient understanding of each component of [ICFR] to (a) identify the types of potential misstatements, (b) assess the factors that affect the risks of material misstatement, and (c) design further audit procedures.'' [74] This understanding includes evaluating the design of the controls relevant to the audit and determining whether the controls have been implemented.[75] A similar evaluation is required in an ICFR attestation.[76]

Also, evaluation and communication to management and the audit committee of significant deficiencies and material weaknesses in ICFR are required in both a financial statement audit and an ICFR attestation audit.[77] When the auditor becomes aware of a material weakness, it has the responsibility to review management's disclosure for any misstatement of facts, such as a statement that ICFR is effective when there is a known material weakness, including in a financial statement audit.[78] Further, as discussed above, auditors may also test operating effectiveness of internal controls in a financial statement audit, such as when the auditor determines to rely on those controls to reduce the substantive testing.

We note that, because certain of the information considered by the independent auditor for the ICFR attestation is also considered by the auditor for purposes of the issuer's financial statement audit, some of the audit fees and the other audit-related costs associated with the ICFR auditor

[70] Tables 2 and 3 include only the initial SRC and accelerated filer thresholds and exclude the transition thresholds. A large accelerated filer may be eligible to be an SRC only through the transition threshold, so the table does not reflect the relationship between SRCs and large accelerated filers.

[71] *See* AS 2301, *The Auditor's Response to the Risks of Material Misstatement,* paragraph .16.

[72] *See id.,* paragraph .17.

[73] *See* 2110, note 48 above, paragraphs .18–.40.

[74] *See id.,* paragraph .18.

[75] *See id.,* paragraph .20.

[76] *See generally* AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements.* This standard relates to testing of design and whether the controls are implemented are part of the ICFR auditor attestation requirement.

[77] *See* AS 1305, *Communications About Control Deficiencies in an Audit of Financial Statements,* and *id.,* at paragraphs .78–.80.

[78] *See generally* AS 2710, *Other Information in Documents Containing Audited Financial Statements.*

attestation requirement are included in the issuer's financial statement audit costs. However, for issuers with less complex financial systems and controls, such as issuers with lower revenues, this may be less likely to be the case under the proposed amendments. For these issuers, the auditor could determine that, in the absence of an ICFR auditor attestation requirement, it may be a more effective and efficient financial statement audit approach to not rely on and have to test the operating effectiveness of certain controls, such as those related to revenue recognition. Therefore, eliminating the ICFR auditor attestation requirement could have a greater impact in the reduction of costs for such issuers.

As discussed in more detail in the Economic Analysis section below,[79] there are a number of component costs of the ICFR auditor attestation requirement. In general, the largest individual cost component relates to audit fees that would typically not be incurred in audits in which an ICFR attestation is not required.[80] We estimate that such audit fees would average approximately $110,000 per year for accelerated filers with revenues of less than $100 million. The ICFR auditor attestation requirement is also associated with additional costs,[81] and we estimate that these non-audit costs would average approximately $100,000 per year for accelerated filers. We believe that the proposed amendments would eliminate these two types of costs for issuers that are eligible to be an SRC under the SRC revenue test.

Although certain requirements and costs of the ICFR attestation overlap with those associated with a financial statement audit, we continue to believe that the ICFR auditor attestation requirement incrementally can contribute to the reliability of financial disclosures, particularly for issuers that typically have more complex financial reporting requirements and processes. Accordingly, the proposed amendments would not eliminate the requirement for all accelerated filers that are SRCs. Instead, the proposed amendments reflect a more tailored approach that recognizes that the impact of the ICFR auditor attestation requirement on the reliability of an issuer's financial disclosures is not necessarily the same across all issuers, including all SRCs.[82]

As noted in this section above, and discussed in greater detail below,[83] the compliance costs associated with the ICFR auditor attestation requirement may be disproportionately burdensome for the issuers that are eligible to be an SRC under the SRC revenue test and, as with all compliance requirements, these costs may divert funds otherwise available for reinvestment by these issuers because they have less access than other issuers to internally-generated capital. In this regard, the issuers we expect to be affected by the proposed amendments are concentrated in a few specific industries. For example, 36.1% of the issuers that are eligible to be an SRC under the SRC revenue test are in the ''Pharmaceutical Products'' or ''Medical Equipment'' industries,[84] and a number of commenters noted that the attestation requirement is especially burdensome for biotechnology issuers.[85] We believe these and other low-revenue issuers would particularly benefit from the cost savings associated with non-accelerated filer status and could re-direct those savings into growing their business without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers.

Further, the benefits of the ICFR auditor attestation requirement may be smaller for issuers with low revenues because they may be less susceptible to the risk of certain kinds of misstatements, such as those related to revenue recognition. Also, it is possible that low-revenue issuers may have less complex financial systems and controls and, therefore, be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation. Additionally, we note the financial statements of low-revenue issuers may, in many cases, be less critical to assessing their valuation given, for example, the relative importance of their future prospects.[86]

Providing this benefit to low-revenue SRCs is consistent with our historical practice of providing scaled disclosure and other accommodations for smaller issuers[87] and with recent actions by Congress to reduce burdens on new and smaller issuers.[88] Issuers that are eligible to be an SRC under the SRC revenue test no longer would be required to comply with accelerated or large accelerated filer requirements, reducing these issuers' compliance costs and thereby enhancing their ability to preserve capital without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers.

D. Proposed Amendments to the Transition Provisions in the Accelerated and Large Accelerated Filer Definitions

We are also proposing to amend the transition thresholds for issuers exiting accelerated and large accelerated filer status. First, the proposed amendments would revise the public float transition threshold for accelerated and large accelerated filers to become a non-accelerated filer from $50 million to $60 million.[89] Second, the large accelerated filer public float transition provision would be revised from $500 million to $560 million.[90] Finally, the proposed amendments would add the SRC revenue test to the transition threshold for accelerated[91] and large accelerated filers.[92]

Under the current rules, once an issuer is an accelerated or a large accelerated filer, it will not become a non-accelerated or accelerated filer until its public float falls below a specified lower threshold than the public float threshold that it needed to become an accelerated or large accelerated filer initially. The purpose of this lower threshold is to avoid situations in which an issuer frequently enters and exits accelerated and large accelerated filer status due to small fluctuations in its public float.

Currently, an issuer initially becomes an accelerated filer after it first meets certain conditions as of the end of its fiscal year, including that it had a public

[79] *See* Section III.C.3 below.

[80] *See* Section III.C.3.b below.

[81] *See* Section III.C.3.c below.

[82] Although the proposed amendments would not eliminate the attestation requirement for all accelerated filers that are SRCs, we are soliciting comment on whether such an approach would be appropriate and the relative costs and benefits of such an approach for both issuers and investors.

[83] *See* Section III.A below.

[84] *See* Section III.C.1 below.

[85] *See, e.g.,* letters from Acorda *et al.,* BIO, CONNECT, CSBA, and Seneca.

[86] *See* Section III.C.4.a below.

[87] *See, e.g.,* SRC Regulatory Relief Release, note 13 above, 2007 SRC Adopting Release, note 60 above, and SRC Adopting Release, note 16 above.

[88] For example, Title I of the JOBS Act amended SOX Section 404(b) to exempt EGCs from the ICFR auditor attestation requirement. In addition, Section 72002 of the Fixing America's Surface Transportation Act of 2015 requires the Commission to revise Regulation S–K to further scale or eliminate requirements to reduce the burden on EGCs, accelerated filers, SRCs, and other smaller issuers, while still providing all material information to investors. *See* Public Law 114–94, 129 Stat. 1312 (2015).

[89] *See* proposed paragraphs (3)(ii) and (iii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

[90] *See* proposed paragraph (3)(iii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

[91] *See* proposed paragraph (3)(ii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

[92] *See* proposed paragraph (3)(iii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

float of $75 million or more but less than $700 million as of the last business day of its most recently completed second fiscal quarter. An issuer initially becomes a large accelerated filer in a similar manner, including that it had a public float of $700 million or more as of the last business day of its most recently completed second fiscal quarter. Once the issuer becomes an accelerated filer, it will not become a non-accelerated filer unless it determines at the end of a fiscal year that its public float had fallen below $50 million on the last business day of its most recently completed second fiscal quarter.[93] Similarly, a large accelerated filer will remain one unless its public float had fallen below $500 million on the last business day of its most recently completed second fiscal quarter.[94] If the large accelerated filer's public float falls below $500 million but is $50 million or more, it becomes an accelerated filer. Alternatively, if the issuer's public float falls below $50 million, it becomes a non-accelerated filer.[95]

The table below summarizes the existing transition thresholds and how an issuer's filer status changes based on its subsequent public float determination.

TABLE 4—SUBSEQUENT DETERMINATION OF FILER STATUS BASED ON PUBLIC FLOAT UNDER EXISTING REQUIREMENTS

Existing requirements			
Initial public float determination	Resulting filer status	Subsequent public float determination	Resulting filer status
$700 million or more	Large Accelerated Filer	$500 million or more	Large Accelerated Filer.
		Less than $500 million but $50 million or more.	Accelerated Filer.
		Less than $50 million	Non-Accelerated Filer.
Less than $700 million but $75 million or more.	Accelerated Filer	Less than $700 million but $50 million or more.	Accelerated Filer.
		Less than $50 million	Non-Accelerated Filer.

The proposed amendments would revise the transition threshold for becoming a non-accelerated filer from $50 million to $60 million and the transition threshold for leaving the large accelerated filer status from $500 million to $560 million. We preliminarily believe it would be appropriate to increase these transition thresholds because doing so would make the public float transition thresholds 80% of the initial thresholds, which would be consistent with the percentage used in the transition thresholds for SRC eligibility. In the SRC Adopting Release,[96] we amended the SRC rules so that the SRC transition thresholds were set at 80% of the corresponding initial qualification thresholds. Revising these transition thresholds to be 80% of the corresponding initial qualification thresholds would align the transition thresholds across the SRC, accelerated filer, and large accelerated filer definitions. Additionally, revising these thresholds would limit the cases in which an issuer could be both an accelerated filer and an SRC or a large accelerated filer and an SRC, thereby reducing regulatory complexity.

TABLE 5—SUBSEQUENT DETERMINATION OF FILER STATUS BASED ON PUBLIC FLOAT UNDER PROPOSED AMENDMENTS

Proposed amendments to the public float thresholds			
Initial public float determination	Resulting filer status	Subsequent public float determination	Resulting filer status
$700 million or more	Large Accelerated Filer	$560 million or more	Large Accelerated Filer.
		Less than $560 million but $60 million or more.	Accelerated Filer.
		Less than $60 million	Non-Accelerated Filer.
Less than $700 million but $75 million or more.	Accelerated Filer	Less than $700 million but $60 million or more.	Accelerated Filer.
		Less than $60 million	Non-Accelerated Filer.

In addition, the proposed amendments would add the SRC revenue test to the public float transition thresholds for accelerated and large accelerated filers. We are proposing that an issuer that is already an accelerated filer will remain one unless either its public float falls below $60 million or it becomes eligible to use

[93] *See* paragraph (3)(ii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

[94] *See* paragraph (3)(iii) of the ''accelerated and large accelerated filer'' definition in Rule 12b–2.

[95] For example, under the current rules, if an issuer that is a non-accelerated filer determines at the end of its fiscal year that it had a public float of $75 million or more, but less than $700 million, on the last business day of its most recently-completed second fiscal quarter, it will become an accelerated filer. On the last business day of its next fiscal year, the issuer must re-determine its public float to re-evaluate its filer status. If the accelerated filer's public float fell to $70 million on the last business day of its most recently-completed second fiscal quarter, it would remain an accelerated filer because its public float did not fall below the $50 million transition threshold. Alternatively, if the issuer's public float fell to $49 million, it would then become a non-accelerated filer because its newly-determined public float is below $50 million.

As another example, an issuer that has not been a large accelerated filer but had a public float of $700 million or more on the last business day of its most recently completed second fiscal quarter would then become a large accelerated filer at the end of its fiscal year. If, on the last business day of its subsequently completed second fiscal quarter, the issuer's public float fell to $600 million, it would remain a large accelerated filer because its public float did not fall below $500 million. If, however, the issuer's public float fell to $490 million at the end of its most recently-completed second fiscal quarter, it would become an accelerated filer at the end of the fiscal year because its public float fell below $500 million. Similarly, if the issuer's public float fell to $49 million, the issuer would become a non-accelerated filer.

[96] *See* note 16 above.

the SRC accommodations under the revenue test in paragraphs (2) or (3)(iii)(B), as applicable, of the SRC definition. An issuer that is initially applying the SRC definition or previously qualified as an SRC would apply paragraph (2) of the SRC definition. Once an issuer determines that it does not qualify for SRC status, it would apply paragraph (3)(iii)(B) of the SRC definition at its next annual determination.

As discussed above, paragraph (2) of the SRC definition states that an issuer qualifies as an SRC if its annual revenues are less than $100 million and it has no public float or a public float of less than $700 million. Paragraph (3)(iii)(B) of the SRC definition states, among other things, that an issuer that initially determines it does not qualify as an SRC because its annual revenues are $100 million or more cannot become an SRC until its annual revenues fall below $80 million.[97] Therefore, under the proposed amendments, an accelerated filer would remain an accelerated filer until its public float falls below $60 million or its annual revenues fall below the applicable revenue threshold ($80 million or $100 million), at which point it would become a non-accelerated filer.

Similarly, we are proposing conforming amendments to the large accelerated filer transition provisions that describe when an issuer that is already a large accelerated filer transitions to either accelerated or non-accelerated filer status. As discussed above, to transition out of large accelerated filer status at the end of the issuer's fiscal year, an issuer would need to have a public float below $560 million as of the last business day of its most recently completed second fiscal quarter or meet the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the SRC definition. A large accelerated filer would become an accelerated filer at the end of its fiscal year if its public float fell to $60 million or more but less than $560 million as of the last business day of its most recently completed second fiscal quarter and its annual revenues are not below the applicable revenue threshold ($80 million or $100 million). The large accelerated filer would become a non-accelerated filer if its public float fell below $60 million or it meets the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the SRC definition.

For a large accelerated filer to meet the SRC revenue test, generally, its public float would need to fall below $560 million as of the last business day of its most recently completed second fiscal quarter and its annual revenues would need to fall below the applicable revenue threshold ($80 million or $100 million). One exception to this requirement is that an issuer that was a large accelerated filer whose public float had fallen below $700 million (but remained $560 million or more) but became eligible to be an SRC under the SRC revenue test in the first year the SRC amendments became effective would become a non-accelerated filer even though its public float remained at or above $560 million.[98] If the SRC revenue test were not added to the accelerated filer and large accelerated filer transition provisions, an issuer's annual revenues would never factor into determining whether an accelerated filer could become a non-accelerated filer, or whether a large accelerated filer could become an accelerated or non-accelerated filer. For example, if the SRC revenue test is not added to the transition provisions, an accelerated filer with a public float that remains more than $60 million but less than $700 million and with annual revenues of $100 million or more would not be able to become a non-accelerated filer even if its annual revenues subsequently fall below $80 million.

E. Request for Comment

We request and encourage any interested person to submit comments regarding the proposed amendments, specific issues discussed in this release and other matters that may have an effect on the proposals. We note that comments are of the greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

1. Should we exclude an issuer that is eligible to be an SRC under the SRC revenue test from the accelerated and large accelerated filer definitions, as proposed? Why or why not? Are there investor protection benefits in distinguishing an issuer that is eligible to be an SRC under the SRC revenue test from an SRC that does not meet the revenue test and therefore would be an accelerated or large accelerated filer? Should we use different criteria to identify issuers to exclude from the accelerated and large accelerated filer definitions? If so, what criteria should we use and why?

2. With respect to the ICFR auditor attestation requirement, is the issuer's level of revenues relevant to the complexity of its financial systems and controls and the nature of its ICFR? If so, how does that complexity affect the benefits and costs of ICFR auditor attestation? How do the benefits and costs of the ICFR auditor attestation requirement vary with the complexity of an issuer's financial reporting? Are the financial statements of low-revenue issuers less susceptible to the risk of material misstatements or control deficiencies such that the effect of an ICFR auditor attestation may be less significant than for other types of issuers? Would the proposed approach allow low-revenue issuers to benefit from cost savings without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers?

3. As an alternative, should we instead exclude all SRCs from the accelerated and large accelerated filer definitions? Why or why not? What would be the effects, including the benefits and costs, of such an approach for issuers and investors? What would be the effects on the reliability of such issuers' financial reporting or their

[97] Under the proposed amendments, an accelerated filer with revenues of $100 million or more that is eligible to be an SRC based on the public float test contained in paragraphs (1) and (3)(iii)(A) of the SRC definition could transition to non-accelerated filer status in a subsequent year if it had revenues of less than $100 million.

For example, assuming the proposed amendments were in effect, an issuer with a December 31 fiscal year end that has a public float as of June 29, 2018 of $230 million and annual revenues for the fiscal year ended December 31, 2017 of $101 million would be eligible to be an SRC under the public float test, but because the issuer would not be eligible to be an SRC under the SRC revenue test it would be an accelerated filer (assuming the other conditions described in Table 1 were also met). At the next determination date (June 28, 2019), if its public float as of June 28, 2019 remained at $230 million and its annual revenues for the fiscal year ended December 31, 2018 were less than $100 million, that issuer would be eligible to be an SRC under the SRC revenue test (in addition to the public float test) and thus it would also become a non-accelerated filer.

On the other hand, assuming the proposed amendments were in effect, an issuer with a December 31 fiscal year end that has a public float as of June 29, 2018 of $400 million and annual revenues for the fiscal year ended December 31, 2017 of $101 million would not be eligible to be an SRC under either the public float test or the SRC revenue test and would be an accelerated filer (assuming the other conditions described in Table 1 were also met). At the next determination date (June 28, 2019), if its public float as of June 28, 2019 remained at $400 million, that issuer would not be eligible to be an SRC under the SRC revenue test unless its annual revenues for the fiscal year ended December 31, 2018 were less than $80 million, at which point it would be eligible to be an SRC under the SRC revenue test and also become a non-accelerated filer.

[98] *See* SRC Adopting Release, note 16 above, at note 31 (''For purposes of the first fiscal year ending after effectiveness of the amendments, a registrant will qualify as a SRC if it meets one of the initial qualification thresholds in the revised definition as of the date it is required to measure its public float or revenues (the 'measurement date'), even if such registrant previously did not qualify as a SRC.'')

susceptibility to the risk of material misstatements or control deficiencies? What would be the effects on these issuers' willingness to be public companies? How would such an alternative affect investor protection? Are there additional considerations relevant to such issuers that we should consider? If we were to adopt such an approach, should we adjust the public float and annual revenue thresholds in the accelerated filer definition to be the same as those in the SRC definition? That is, should the accelerated filer definition include only issuers with a public float of $250 million or more but less than $700 million that had revenues of $100 million or more in the previous year? Would this approach have an effect on the transition between accelerated filer and non-accelerated status? If so, what would be the effect? If we were to adopt this approach, should we revise the transition thresholds for large accelerated, accelerated, and/or non-accelerated filers? Alternatively, should we exclude SRCs from the definition of accelerated filer without changing the thresholds in the definition itself? Why or why not? Would these approaches have different effects that we should consider?

4. In the SRC Adopting Release, the Commission established the SRC revenue test to include issuers with annual revenues of less than $100 million if they have no public float or a public float of less than $700 million. The proposed amendments would use the SRC revenue test's $100 million annual revenue threshold to determine whether an issuer would qualify as an accelerated or large accelerated filer. Should the proposed amendments use the SRC revenue test's $100 million annual revenue threshold? Why or why not? Should there be a different annual revenue threshold for determining whether an issuer is an accelerated or large accelerated filer? Why or why not?

5. Would it be more appropriate to determine filer status for any given year by using the average of an issuer's public float, or applying some other metric, such as the issuer's volume-weighted average price (''VWAP'')? What would be the appropriate way to calculate an issuer's VWAP? If filer status were determined through the use of a VWAP calculation, should shares held by affiliates be included in the calculation of the issuer's market value or public float? Why or why not? Should a VWAP calculation reflect the average VWAP over a longer period of time? If so, what longer period of time (*e.g.,* three consecutive trading days, one week, one month, or one quarter), or different metric, would be more appropriate? What costs and benefits would be associated with use of a longer period of time or a different valuation standard? For example, if an average of an issuer's public float over a longer period of time is used, are there additional costs to issuers to compute their aggregate worldwide number of shares of common equity held by non-affiliates on each of the respective days? If we used a longer period of time or different valuation standard in the accelerated filer definitions, should we similarly revise other provisions that require an issuer to calculate its public float on a single day, such as in the Rule 12b–2 definition of an SRC?

6. Should all SRCs that meet the accelerated filer definition be excluded from only the accelerated reporting deadlines? Would investors be adversely affected by expanding the population of issuers that would report later than they do today?

7. Should we increase the non-accelerated filer transition threshold from $50 million to $60 million and/or the large accelerated filer transition threshold from $500 million to $560 million, as proposed? Why or why not? Should we revise the non-accelerated filer transition threshold to one other than $60 million and/or the large accelerated filer transition threshold to one other than $560 million? If so, what threshold would be appropriate?

8. Should we align the transition thresholds in the accelerated filer and large accelerated filer definitions with the SRC revenue test transition threshold, as proposed? Why or why not? Instead of aligning the transition thresholds, should we consider other approaches to the transition thresholds in the accelerated filer and large accelerated filer definitions? For example, should we adjust the transition provisions of the large accelerated filer definition to permit all issuers with a public float below $700 million and annual revenues below $100 million to become non-accelerated filers even if such issuers would not meet the transition thresholds to qualify as SRCs? Why or why not? For example, what would be the effects of any such alternatives on the frequency with which an issuer enters and exits large accelerated, accelerated, or non-accelerated filer status due to small fluctuations in public float or revenues?

9. Should we adjust the transition provisions of the accelerated filer and large accelerated filer definitions to include the respective public float and annual revenue thresholds in the definitions, rather than referencing the SRC revenue test? Why or why not?

10. We request comment on alternative approaches that would include or exclude additional issuer types from the accelerated and large accelerated filer definitions. For example, should we exclude FPIs from the proposed amendments? Why or why not? Should we permit BDCs and majority-owned subsidiaries of non-SRCs, which are excluded from the definition of SRC, to be non-accelerated filers if they meet the SRC revenue test thresholds? Why or why not? The SRC revenue test thresholds are based, in part, on an issuer's annual revenues. Are there alternative metrics that should be applied for BDCs instead of revenue? For example, should we use investment income received by the BDC rather than revenue? Should we include realized gains and losses from the sale of portfolio securities? Should unrealized gains and losses affect a BDC's revenue for this purpose, and if so, how? Should we use the net increase or decrease in net assets resulting from operations? Alternatively, should we also exclude BDCs if they meet the public float test in the SRC definition alone? Should we have a specific BDC test of $250 million or less in public float and $50 million or less in investment income? [99] Why or why not? Are there other alternatives we should consider, such as providing an independent accountant's report on internal controls similar to the one required by Form N–CEN? If we were to require a Form N–CEN report, should we apply the requirement only to those BDCs that were previously required to provide a report under SOX Section 404(b)?

11. Should we provide a definition for the term ''non-accelerated filer?'' If so, should we define it as a filer that is not an accelerated or large accelerated filer? Why or why not? Should we use some other definition?

12. The proposed rule would refer to ''paragraphs (2) or (3)(iii)(B)'' of the SRC definition instead of referring to the actual numerical thresholds specified in those paragraphs. Should we include the actual numerical thresholds? Why or why not?

13. For the low-revenue issuers that would be newly exempted from the ICFR auditor attestation requirement under the proposed amendments, would an auditor engaged for the purpose of a financial statement only audit be as likely to test the operating effectiveness of certain of the issuer's internal

[99] A $250 million or less public float threshold would be consistent with the SRC definition, and we estimate that the average of the investment income of BDCs with market capitalization ranging from $75 to $700 million is $50 million. *See* Section III.C.6 below.

controls to reduce the amount of substantive testing it performs as it may do under our existing rules? Given the potential for such testing as well as the risk assessment standards that apply to a financial statement only audit, to what extent would the consideration of internal controls by the auditors of these issuers change as a result of the proposed amendments?

14. Should we consider any changes in how and where issuers report their accelerated filer status, public float, or revenue? Should we consider any new disclosure requirements associated with the proposed amendments? For example, should we permit or require issuers that voluntarily comply with SOX Section 404(b) to disclose that information, such as on the cover page of their periodic filings? If so, should we require issuers that voluntarily comply with SOX Section 404(b) to include the ICFR auditor attestation with the filing?

15. In lieu of, or in addition to, the proposed amendments, should we consider amendments that would result in ICFR attestation audits being required at a reduced frequency? For example, should we require the proposed affected issuers to provide an ICFR auditor attestation only once every three years? If required once every three years, what financial reporting periods should we require the ICFR attestation audit to cover? Currently, the ICFR attestation audit is required to cover only the current period. Should we require the ICFR attestation audit to cover only the current period or should it include all three years?

III. Economic Analysis

We are mindful of the costs and benefits of the proposed amendments. Exchange Act Section 3(f) requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of shareholders, whether the action will promote efficiency, competition, and capital formation.[100] Exchange Act Section 23(a)(2) requires us, when adopting rules, to consider the impact that any new rule would have on competition and prohibits any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[101]

The discussion below addresses the economic effects of the proposed amendments, including their anticipated costs and benefits, as well as the likely effects of the proposed amendments on efficiency, competition, and capital formation. We also analyze the potential costs and benefits of reasonable alternatives to what is proposed. Where practicable, we have attempted to quantify the economic effects of the proposal; however, in certain cases, we are unable to do so because either the necessary data are unavailable or certain effects are not quantifiable. In these cases, we provide a qualitative assessment of the likely economic effects.

A. Introduction

As discussed above, we are proposing amendments to the definition of ''accelerated filer'' that will expand the number of issuers that qualify as non-accelerated filers. Currently, issuers with no public float or public float of less than $75 million are generally non-accelerated filers. The proposed amendments would generally extend non-accelerated filer status to issuers with a greater public float if they are eligible to be SRCs and their revenues are less than $100 million. As non-accelerated filers, these issuers would not be required to obtain an ICFR auditor attestation pursuant to SOX Section 404(b). They also would be permitted an additional 15 days and five days, respectively, after the end of each period to file their annual and quarterly reports, relative to the deadlines that apply to accelerated filers.[102] The proposed amendments also would revise the transition provisions for accelerated and large accelerated filer status, including increasing the public float thresholds to exit accelerated and large accelerated filer status from $50 million and $500 million in public float to $60 million and $560 million in public float.

As discussed above, the ICFR auditor attestation requirement was introduced together with other changes to the financial reporting control environment with the intention of improving the accuracy and reliability of corporate disclosures. Section III.C.4.a discusses the evidence that the imposition of the ICFR auditor attestation requirement has been associated with benefits to issuers and investors. However, this requirement has also been associated with significant compliance costs. Relative to other issuers that are subject to this requirement, the affected issuers may find the costs to be particularly burdensome, while the ICFR auditor attestation requirement may, on average, provide fewer benefits related to the accuracy and reliability of these issuers' financial statements. Further, issuers exempted from this requirement may choose to voluntarily obtain an ICFR auditor attestation if investors demand it or the issuers otherwise deem it, from their perspective, to be the best use of their resources.[103] The proposed amendments are therefore intended to reduce compliance costs for these issuers without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers.

In particular, we estimate that the affected issuers have median annual revenues of about $40 million and a median number of employees of about 125, while their median public float is about $145 million.[104] The costs of providing an ICFR auditor attestation include some fixed costs that do not scale proportionately with size, and may therefore be disproportionately burdensome for smaller issuers. For the affected issuers, these costs may represent a meaningful percentage of their cash flows. Importantly, because these issuers have limited access to internally-generated capital, compliance costs may be more likely to displace spending on other things such as investment, research, or hiring than for other issuers subject to the ICFR auditor attestation requirement. Exempting these issuers from this requirement would allow them the discretion to invest their funds in the way they believe is most value-enhancing. At the same time, the ICFR auditor attestation requirement may, on average, provide fewer benefits related to these issuers versus other issuers subject to this requirement.

We find preliminary evidence consistent with the argument that, compared to other issuers subject to the ICFR auditor attestation requirement, the affected issuers may be less susceptible to the risk of certain kinds of misstatements (such as those related to revenue recognition). Although we expect that exempting these issuers may result in some adverse effects on the effectiveness of their ICFR and their

[100] 15 U.S.C. 78c(f).

[101] 15 U.S.C. 78w(a)(2).

[102] Non-accelerated filers also are not required to provide disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports or disclosure required by Item 101(e)(4) of Regulation S–K about whether they make filings available on or through their internet websites.

[103] As discussed below, issuers may not always choose to voluntarily obtain an ICFR auditor attestation even when the total benefits of doing so would exceed the total costs because they may not internalize some of the market-level benefits of compliance and because the incentives of managers may not be aligned perfectly with those of shareholders.

[104] *See* Section III.C.1 for detail on the data sources and methodologies underlying these estimates.

restatement rates, we preliminarily believe that these effects are unlikely to result in a rate of restatements for the affected issuers that exceeds that for the issuers that would remain subject to this requirement. Moreover, in many cases, the market value of the affected issuers may be driven to a greater degree by their future prospects than by the current period's financial statements. We find evidence consistent with this argument, which could further mitigate the extent of the adverse effects of eliminating the ICFR auditor attestation requirement for these issuers.

The discussion that follows examines the potential benefits and costs of the proposed amendments in detail, with consideration for the likelihood that the effects of the ICFR auditor attestation have changed over time with changes in auditing standards and other market conditions.

B. Baseline

To assess the economic impact of the proposed amendments, we are using as our baseline the current state of the market under the existing definition of ''accelerated filer.'' This section discusses the current regulatory requirements and market practices. It also provides statistics characterizing accelerated filers, the timing of filings, disclosures about ineffective ICFR, and restatement rates under the baseline.

1. Regulatory Baseline

Our baseline includes existing statutes and Commission rules that govern the responsibilities of issuers with respect to financial reporting, as well as PCAOB auditing standards and market standards related to the implementation of these responsibilities.

In particular, accelerated and large accelerated filers are subject to accelerated filing deadlines for their periodic reports relative to non-accelerated filers. These deadlines are summarized in Table 6 below. All registrants can file Form 12b–25 (''Form NT'') to avail themselves of an additional 15 calendar days to file an annual report, or an additional five calendar days to file a quarterly report, and still have their report deemed to have been timely filed.

TABLE 6—FILING DEADLINES FOR PERIODIC REPORTS

Category of filer	Calendar days after period end	
	Annual	Quarterly
Non-Accelerated Filer	90	45
Accelerated Filer	75	40
Large Accelerated Filer	60	40

Section II.B. above discusses in detail the issuer and auditor responsibilities with respect to disclosure controls and procedures and ICFR for issuers of different filer types. These responsibilities reflect the FCPA requirements with respect to internal accounting controls as well as a number of different changes to the financial reporting control environment that were introduced by SOX.

In particular, all issuers [105] are required to devise and maintain an adequate system of internal accounting controls [106] and to have their corporate officers assess the effectiveness of the issuer's disclosure controls and procedures [107] and disclose the conclusions of their assessments, typically on a quarterly basis.[108] In addition, all issuers are required to have their corporate officers certify in each of their periodic reports that the information in the report fairly presents, in all material respects, the issuer's financial condition and results of operations.[109] All issuers other than RICs and ABS issuers [110] are also required to include management's assessment of the effectiveness of their ICFR in their annual reports.[111] Further, all issuers are required to have the financial statements in their annual reports examined and reported on by an independent auditor, who, even if not engaged to provide an ICFR auditor attestation, is responsible for considering ICFR in the performance of the financial statement audit.[112] Also, an auditor engaged in a financial statement only audit may choose, though it is not required, to test the operating effectiveness of some internal controls in order to reduce the extent of substantive testing required to issue an opinion on the financial statements. Finally, all issuers listed on national exchanges are required to have an audit committee that is composed solely of independent directors and is directly responsible for the appointment, compensation, retention and oversight of the issuer's independent auditors.[113] Importantly, all of these responsibilities with respect to financial reporting and ICFR apply equally to non-accelerated as well as accelerated and large accelerated filers.

Beyond these requirements, accelerated filers and large accelerated filers other than EGCs, RICs, and ABS issuers are required under SOX Section 404(b) and related rules to include an ICFR auditor attestation in their annual reports. In addition, certain banks, even if they are non-accelerated filers, are required under Federal Deposit Insurance Corporation (''FDIC'') rules to have their auditor attest to, and report on, management's assessment of the effectiveness of the bank's ICFR and reporting procedures (the ''FDIC auditor attestation requirement'').[114] Some issuers that are not required to comply with SOX Section 404(b) voluntarily obtain an ICFR auditor attestation.[115] Estimates of the number of issuers of

[105] Specifically, the requirements apply to all issuers that file reports pursuant to Section 13(a) or 15(d) of the Exchange Act.

[106] *See* Section 13(b)(2)(B) of the Exchange Act.

[107] Although there is substantial overlap between an issuer's disclosure controls and procedures and ICFR, there are elements of each that are not subsumed by the other.

[108] *See* 17 CFR 240.13a–14 and 17 CFR 240.15d–14.

[109] *See* 17 CFR 240.13a–14(b) and 17 CFR 240.15d–14(b).

[110] *See* 17 CFR 240.13a–15 and 17 CFR 240.15d–15. A newly public issuer is also not required to provide a SOX Section 404(a) management report on ICFR until its second annual report filed with the Commission. *See* Instructions to Item 308 of Regulation S–K.

[111] *See Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,* Release No. 33–8238 (June 5, 2003) [68 FR 36635 (June 18, 2003)]. These evaluations of ICFR, as well as any associated auditor assessments of ICFR, should be based on a suitable, recognized control framework. The most widely used framework for this purpose is the one set forth in a report of the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'').

[112] *See* AS 2110, note 48 above. *See also* the discussion below in this section about this auditing standard.

[113] *See* 17 CFR 240.10A–3.

[114] Part 363 of the FDIC regulations requires that the auditor of an insured depository institution with consolidated total assets of $1 billion or more (as of the beginning of the fiscal year) examine, attest to, and report separately on the assertion of management concerning the effectiveness of the institution's internal control structure and procedures for financial reporting.

[115] Up to about seven percent of exempt issuers voluntarily provided an ICFR auditor attestation from 2005 through 2011. *See* U.S. Gov't Accountability Office, GAO–13–582, *Internal Controls: SEC Should Consider Requiring Companies to Disclose Whether They Obtained an Auditor Attestation* (July 2013) (''2013 GAO Study'').

each filer type are provided in Table 7 below.

TABLE 7—FILER STATUS FOR ISSUERS FILING ANNUAL REPORTS IN 2017 [116]

	Non-accelerated [117]	Accelerated	Large accelerated
Total	3,899	1,497	2,138
Foreign	240	146	255
EGC	1,201	375	0

Audits of ICFR and the associated ICFR auditor attestation reports are made in accordance with AS 2201,[118] previously known as Auditing Standard Number 5 (''AS No. 5'').[119] This standard, which replaced Auditing Standard Number 2 (''AS No. 2'') in 2007, was intended to focus auditors on the most important matters in the audit of ICFR and eliminate procedures that the PCAOB believed were unnecessary to an effective audit of ICFR.[120] Among other things, the 2007 standard facilitates the scaling of the evaluation of ICFR for smaller, less complex issuers.[121] It was accompanied by Commission guidance similarly facilitating the scaling of SOX Section 404(a) management evaluations of ICFR.[122] Relative to AS No. 2, AS 2201 facilitates the scaling of audits of ICFR by, for example, encouraging auditors to use top-down risk-based approaches and to rely on the work of others in the attestation process.

The adoption of AS 2201 in 2007 has been found to have lowered audit fees.[123] However, several studies have provided evidence that, at least initially, audits of ICFR under the revised standard may not have been as effective in improving the quality of ICFR as those under AS No. 2.[124] PCAOB inspections of auditors began, around 2010, to include a heightened focus on whether auditing firms had obtained sufficient evidence to support their opinions on the effectiveness of ICFR.[125] There is some evidence that these inspections have led to an improvement in the reliability of ICFR auditor attestations,[126] but also concerns about whether they have resulted in increased audit fees.[127]

In 2010, the PCAOB adopted enhanced auditing standards related to the auditor's assessment of and response to risk.[128] The enhanced risk assessment standards have likely reduced the degree of difference between a financial statement only audit and an integrated audit (which includes an audit of ICFR) because the standards clarify and augment the extent to which internal controls are to be considered even in a financial statement only audit. In particular, the risk assessment standards applying to both types of audits require auditors, in either case, to evaluate the design of certain controls, including whether the controls are implemented.[129]

[116] The estimates in this table are based on staff analysis of self-identified filer status for issuers filing annual reports on Forms 10–K, 20–F, or 40–F in calendar year 2017, excluding any such filings that pertain to fiscal years prior to 2016. Staff extracted filer status from filings using a computer program supplemented with hand collection and compared the results for robustness with data from XBRL filings, Ives Group Audit Analytics, and Calcbench. Foreign issuers in this table represent those filing on Forms 20–F or 40–F and do not include FPIs that choose to file on Form 10–K. EGC issuers are identified by using data from Ives Group Audit Analytics and/or by using a computer program to search issuer filings, including filings other than annual reports, for a statement regarding EGC status. The estimates generally exclude RICs because these issuers rarely file on the annual report types considered. This table also excludes 135 issuers, mostly Canadian MJDS issuers filing on Form 40–F (which does not require disclosure of filer status or public float), for which filer type is unavailable.

[117] The estimated number of non-accelerated filers includes approximately 586 ABS issuers, which are not required to comply with SOX Section 404. Staff estimates that very few, if any, ABS issuers are accelerated or large accelerated filers. ABS issuers are identified as issuers that made distributions reported via Form 10–D.

[118] *See* note 76 above.

[119] AS No. 5 was renumbered as AS 2201, effective Dec. 31, 2016. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Release No. 2015–002 (Mar. 31, 2015).

[120] *See Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements, and Related Independence Rule and Conforming Amendments,* PCAOB Release No. 2007–005A (June 12, 2007). *See also Public Company Accounting Oversight Board; Order Approving Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements, a Related Independence Rule, and Conforming Amendments,* Release No. 34–56152, File No. PCAOB 2007–02 (July 27, 2007) [72 FR 42141 (Aug. 1, 2007)].

[121] *Id.*

[122] *See Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934,* Release No. 33–8810 (June 20, 2007) [72 FR 35323 (June 27, 2007)]. *See also Amendments to Rules Regarding Management's Report on Internal Control Over Financial Reporting,* Release No. 33–8810 (June 20, 2007) [72 FR 35309 (June 27, 2007)].

[123] *See, e.g., Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements* (Sept. 2009) (''2009 SEC Staff Study''), available at *https://www.sec.gov/news/studies/2009/sox-404_study.pdf;* Rajib Doogar, Padmakumar Sivadasan, & Ira Solomon, 48(4) J. of Acct. Res. 795 (2010).

[124] *See, e.g.,* Joseph Schroeder & Marcy Shepardson, *Do SOX 404 Control Audits and Management Assessments Improve Overall Internal Control System Quality?,* 91(5) **Acct. Rev.** 1513 (''Schroeder and Shepardson 2016 Study''); Lori Bhaskar, Joseph Schroeder, & Marcy Shepardson, *Integration of Internal Control and Financial Statement Audits: Are Two Audits Better than One? Acct. Rev.* (forthcoming 2018) (''Bhaskar *et al.* 2018 Study''), available at *http://aaajournals.org/doi/abs/10.2308/accr-52197.*

[125] *See* Jeanette Franzel, Board Member, PCAOB, Speech by PCAOB board member at the American Accounting Association Annual Meeting, *Current Issues, Trends, and Open Questions in Audits of Internal Control over Financial Reporting* (2015), available at *https://pcaobus.org/News/Speech/Pages/08102015_Franzel.aspx.*

[126] *See* Mark Defond & Clive Lennox, *Do PCAOB Inspections Improve the Quality of Internal Control Audits?,* 55(3) J. of Acct. Res. 591 (2017) (''Defond and Lennox 2017 Study'').

[127] *See, e.g.,* Tammy Whitehouse, *Audit Inspections: Improvement? Maybe. Costs? Yes,* Compliance Week (April 14, 2015), available at *https://www.complianceweek.com/news/news-article/audit-inspections-improvement-maybe-costs-yes#.W5LW7mlpCEd.*

[128] *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release No. 2010–004 (Aug. 5, 2010) (''PCAOB Release No. 2010–004''). *See also Public Company Accounting Oversight Board; Order Approving Proposed Rules on Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* Release No. 34–63606, File No. PCAOB 2010–01 (Dec. 23, 2010) [75 FR 82417 (Dec. 30, 2010)].

[129] *See* AS 2110, note 48 above, paragraphs .18–.40.

Based on the results of inspections in the several years after the adoption of the new risk assessment auditing standards, the PCAOB expressed concern about the number and significance of deficiencies in auditing firm compliance with these standards, but also noted promising improvements in the application of these standards.[130] While the risk assessment standards may reduce the degree of difference between a financial statement only audit and an integrated audit, there remain important differences in the requirements of these audits as they relate to controls. For example, in an integrated audit, but not a financial statement only audit, the auditor is required to identify likely sources of misstatements.[131] Also, the extent of the procedures necessary to obtain the required understanding of controls generally will be greater in an integrated audit due to the different objectives of such an audit as compared to a financial statement only audit.[132]

We also note that there have been some recent changes in accounting and auditing that are part of our baseline and could increase the uncertainty of our analysis due to their effects on factors such as audit fees, restatements, and ICFR. For example, three new reporting standards have been issued recently by FASB, on the topics of revenue recognition, leases, and credit losses, which could temporarily increase audit fees as issuers and auditors adjust to the new standards.[133] Recent changes in audit technology, such as the potential for automated controls testing and process automation,[134] may result in improvements in ICFR regardless of the ICFR auditor attestation requirement. Such automation could also reduce audit fees, including the costs of an audit of ICFR, but the uptake of these technologies has been slow.[135] Finally, auditors have had many years of experience with integrated audits, as well as risk assessment standards that require the consideration of ICFR even in the absence of an ICFR auditor attestation. This experience may affect their execution of financial statement only audits of issuers for whom the ICFR auditor attestation requirement is eliminated. For example, given their experience, auditors may be more likely to detect control deficiencies or to increase their auditing efficiency by reducing substantive testing in favor of testing some related controls even when an ICFR auditor attestation is not required.[136]

2. Characteristics of Accelerated Filer Population

Per Table 7, there were approximately 1,500 accelerated filers in total in 2017. Figure 2 presents the distribution of public float across these issuers.[137]

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[130] *See Inspection Observations Related to PCAOB* ''*Risk Assessment*'' *Auditing Standards (No. 8 through No.15),* PCAOB Release No. 2015–007 i–iii (Oct. 15, 2015).

[131] *See* PCAOB Release No. 2010–004, note 128 above, at 7 and A10–41. As discussed above, even in a financial statement only audit, if the auditor becomes aware of a material weakness in ICFR, it is required to inform management and the audit committee of this finding and has the responsibility to review management's disclosure for any misstatement of facts, such as a statement that ICFR is effective when there is a known material weakness. *See* notes 77 and 78 above.

[132] *See Proposed Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Conforming Amendments to PCAOB Standards,* PCAOB Release No. 2008–006 A9–8 (Oct. 21, 2008).

[133] Information on these and other FASB Accounting Standards updates is available at *https://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176156316498.*

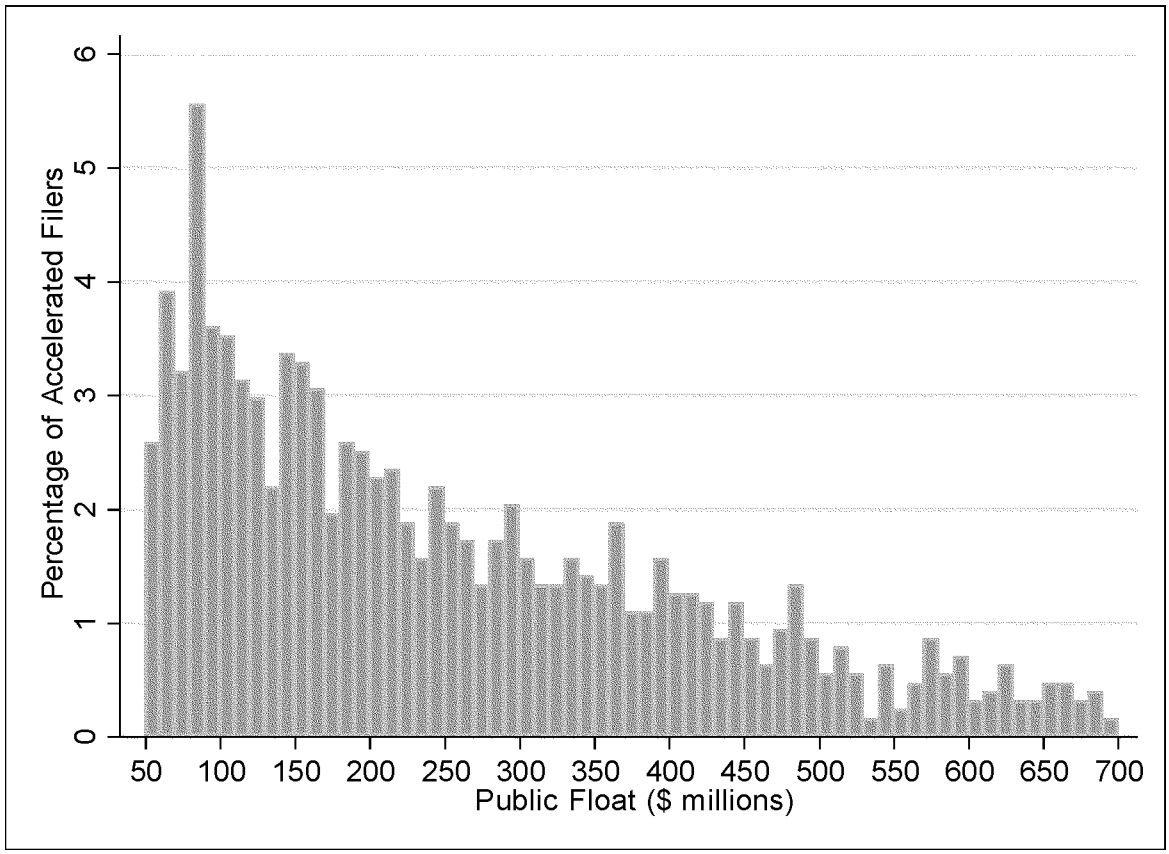
[134] *See, e.g.,* Kevin Moffitt, Andrea Rozario, & Miklos Vasarhelyi (2018), *Robotic Process Automation for Auditing,* Journal of Emerging Technologies, 15(1) **Acct.** 1 (describing how, for example, a robotic process automation program can be ''set up to automatically match purchase orders, invoices, and shipping documents [and] can check that the price and quantity on each of the documents match [to] help auditors validate the effectiveness of preventive internal controls . . . .'').

[135] *See, e.g.,* Protiviti survey results, *Benchmarking SOX Costs, Hours and Controls* (2018) (''Protiviti 2018 Report'').

[136] *See, e.g.,* 2011 SEC Staff Study, note 49 above, at 106 (stating that ''. . . once effective controls are in place at the issuer, the auditor is more likely to continue to test them even if [it is] not issuing an auditor attestation during a particular year in order to rely on them for purposes of reducing substantive testing in the audit of the financial statements, particularly for issuers that are larger and more complex'').

[137] Because of the accelerated filer transition provisions, some accelerated filers have float below $75 million. The public float of these issuers would previously have exceeded $75 million, causing them to enter accelerated filer status, but has not dropped below the $50 million public float level required to exit accelerated filer status.

Figure 2. Distribution of public float of accelerated filers in 2017[138]

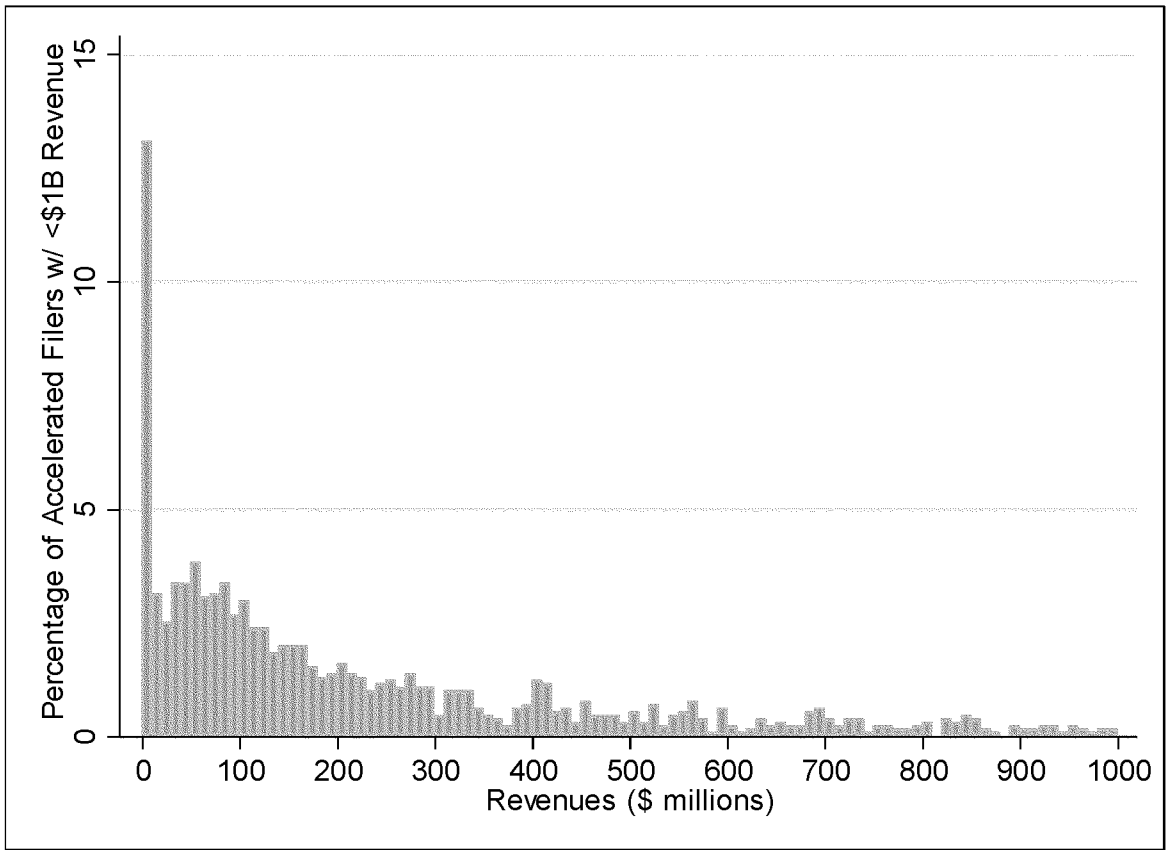


The distribution of public float among accelerated filers is skewed towards lower levels of float, but higher levels of float are also significantly represented.

Figure 3 presents the distribution of revenues across those accelerated filers that have less than $1 billion in revenues. While the full population of accelerated filers has revenues of up to over $8 billion, about 90% of accelerated filers have less than $1 billion in revenues. We restrict the figure to this subset in order to more clearly display the distribution in this range.

[138] The estimates in the figure are based on staff analysis of data from XBRL filings. *See* note 116 above for details on the identification of the population of accelerated filers.

Figure 3. Distribution of prior fiscal year revenues of accelerated filers in 2017, amongst those with less than $1 billion in such revenues[139]



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The distribution of revenues for accelerated filers is heavily skewed towards lower levels of revenue, with roughly three-quarters of accelerated filers having revenues of less than $500 million and more than a third having revenues of less than $100 million. Other than a clustering of issuers with zero or near zero revenues, there are no obvious breaks in the distribution.

While a large range of industries are represented among accelerated filers, a small number of industries account for the majority of these issuers. The ''Banking'' industry accounts for about 14.2% of accelerated filers, followed by ''Pharmaceutical Products'' (12.8%), ''Financial Trading'' (7.7%), ''Business Services'' (6.7%), ''Computer Software'' (4.5%), ''Electronic Equipment'' (4.3%) and ''Petroleum and Natural Gas'' (4.0%).[140]

3. Timing of Filings

As discussed above, non-accelerated, accelerated, and large accelerated filers face different filing deadlines for their periodic reports. In Table 8, we present the timing in recent years of annual report filings by these different groups of issuers relative to their corresponding deadlines.

TABLE 8—FILING TIMING FOR ANNUAL REPORTS IN YEARS 2014 THROUGH 2017, BY FILER STATUS[141]

	Non-accelerated	Accelerated	Large accelerated
Annual report filing deadline	90 days	75 days	60 days.
Average days to file	101 days	70 days	56 days.
Percentage filed:			
By deadline	73%	91%	95%.
Over 5 days early	45%	64%	63%.
After deadline	27%	9%	5%.
Over 15 days after deadline	11%	4%	3%.

[139] The estimates of revenues are based on staff analysis of data from XBRL filings, Compustat, and Calcbench. The revenue data used is from the last fiscal year prior to the annual report in calendar year 2017, because the SRC revenue test is based on the prior year's revenues. *See* note 116 above for details on the identification of the population of accelerated filers.

[140] These estimates are based on staff analysis of data including SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. *See http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html*. *See* note 116 above for details on identification of population of accelerated filers.

Table 8 documents that accelerated and large accelerated filers file their annual reports, on average, four or five days before the applicable deadline. Nine percent and five percent, respectively, of accelerated and large accelerated filers submit their annual reports after the initial deadline, with roughly half of these filers surpassing the 15-day grace period that is obtained by filing Form NT. Non-accelerated filers are less likely to meet their initial deadline or extended deadline, with the average non-accelerated filer submitting its annual report 11 days after the initial deadline and 11% of non-accelerated filers filing after the 15-day grace period obtained by filing Form NT.

4. Internal Controls and Restatements

We next consider the current rates of ineffective ICFR and restatements [142] among issuers that are accelerated filers under the baseline relative to other filer types. Throughout our analysis, we use the term restatement to refer to a restatement that is associated with some type of misstatement. As discussed above, non-accelerated filers and EGCs are statutorily exempted from the ICFR auditor attestation requirement. Table 9 presents the percentage of issuers reporting ineffective ICFR in recent years by filer type.

TABLE 9—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR [143]

Ineffective ICFR year reported in:	Non-accelerated (percent)	Accelerated (percent)	Large accelerated (percent)
Management Report			
2014	40.3	7.8	3.1
2015	41.2	8.8	3.7
2016	38.4	9.3	4.5
2017	40.3	9.4	4.9
Average/year	*40.1*	*8.8*	*4.1*
Auditor Attestation			
2014	n/a	8.0	3.3
2015	n/a	8.8	3.7
2016	n/a	8.9	4.5
2017	n/a	9.6	4.8
Average/year	*n/a*	*8.8*	*4.1*

Based on management's SOX Section 404(a) reports on ICFR from recent years, on average, about eight or nine percent of accelerated filers reported at least one material weakness in ICFR in a given year.[144] This represents a moderately higher rate than that among large accelerated filers, approximately four percent, on average, of which reported ineffective ICFR,[145] and a substantially lower rate than that among non-accelerated filers, more than a third of which reported ineffective ICFR each year.[146] For issuers subject to the ICFR auditor attestation requirement, the rates of ineffective ICFR reported by management and by auditors are similar. This may not be surprising, as management will be made aware of any material weaknesses discovered by the auditor and vice versa.

We next consider the persistence of material weaknesses across these issuer categories. Table 10 presents the percentage of issuers that reported two, three, or four consecutive years of ineffective ICFR culminating in 2017, by filer type.

TABLE 10—PERCENTAGE OF ISSUERS REPORTING CONSECUTIVE YEARS OF INEFFECTIVE ICFR IN MANAGEMENT REPORT, BY 2017 FILER STATUS [147]

Ineffective ICFR years:	Non-accelerated	Accelerated	Large accelerated
	As % of issuers		
2016–2017 (at least 2 years)	27.5	4.3	1.6
2015–2017 (at least 3 years)	20.6	2.2	0.4
2014–2017 (4 years)	15.4	1.3	0.2
	As % of issuers with 2017 ineffective ICFR		
2016–2017 (at least 2 years)	68.6	48.9	39.0
2015–2017 (at least 3 years)	51.4	25.0	9.8

[141] The estimates in this table are based on staff analysis of EDGAR filings. These statistics include all annual reports on Forms 10–K, 20–F, and 40–F filed in calendar years 2014 through 2017 other than amendments. Given the effect of weekends and holidays, filings are considered to be on time if within two calendar days after the original deadline. The ''5 days early'' and ''over 15 days after'' categories are similarly adjusted to account for the possible effect of weekends and holidays. *See* note 116 above for details on the identification of filer type.

[142] Unless otherwise specified, statistics and analysis regarding restatements are not restricted to those restatements requiring Form 8–K Item 4.02 disclosure.

[143] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. ICFR effectiveness is based on the last amended management or auditor attestation report for the fiscal year. Percentages are computed out of all issuers of a given filer type with the specified type of report available in the Ives Group Audit Analytics database. *See* note 116 above for details on the identification of filer type.

[144] Per the second column of the first panel of Table 9, the rate of ineffective ICFR among accelerated filers has ranged from 7.8 to 9.4% for the years 2014 through 2017, for an average per year of 8.8%.

[145] Per the third column of the first panel of Table 9, the rate of ineffective ICFR among large accelerated filers has ranged from 3.1 to 4.9% for the years 2014 through 2017, for an average per year of 4.1%.

[146] Per the first column of the first panel of Table 9, the rate of ineffective ICFR among non-accelerated filers has ranged from 38.4 to 41.2% for the years 2014 through 2017, for an average per year of 40.1%.

TABLE 10—PERCENTAGE OF ISSUERS REPORTING CONSECUTIVE YEARS OF INEFFECTIVE ICFR IN MANAGEMENT REPORT, BY 2017 FILER STATUS [147]—Continued

Ineffective ICFR years:	Non-accelerated	Accelerated	Large accelerated
2014–2017 (4 years)	38.4	14.8	4.9

Compared to non-accelerated filers, we find that a smaller percentage of accelerated and large accelerated filers report material weaknesses that persist for multiple years, with about one percent of accelerated filers and about 0.2% of large accelerated filers reporting ineffective ICFR for four consecutive years, representing about 15% of the accelerated filers and about five percent of the large accelerated filers that reported ineffective ICFR in 2017. A larger percentage of non-accelerated filers persistently report material weaknesses, with about 15% of these issuers, or more than one-third of those reporting ineffective ICFR in 2017, having reported material weaknesses for four consecutive years.

Table 11 presents the rate of restatements among each of these filer types, excluding EGCs, and for EGCs separately. For each year, we consider the percentage of issuers that eventually restated the financial statements for that year. The reporting lag before restatements are filed results in a lower observed rate in the later years of our sample, particularly for 2016 (and even more so for 2017, which we do not report for this reason), as issuers may yet restate their results from recent years.

TABLE 11—PERCENTAGE OF ISSUERS ISSUING RESTATEMENTS BY YEAR OF RESTATED DATA [148]

Restated	Non-accelerated (ex. EGCs) (percent)	Accelerated (ex. EGCs) (percent)	Large accelerated (percent)	EGC (percent)
Total Restatements:				
2014	10.9	11.4	13.8	17.0
2015	8.9	11.1	11.8	15.5
2016	5.9	7.2	6.6	8.0
Average/year	*8.5*	*9.9*	*10.8*	*13.5*
8–K Item 4.02 Restatements:				
2014	3.3	2.9	2.1	4.9
2015	2.6	3.1	1.4	4.7
2016	1.7	2.1	1.0	2.5
Average/year	*2.5*	*2.7*	*1.5*	*4.0*

The first panel of Table 11 presents the percentage of issuers that make at least one restatement, of any type, while the second panel presents those that make at least one restatement requiring Form 8–K Item 4.02 disclosure. The latter type of restatement (''Item 4.02 restatements'') reflects material misstatements, while other restatements deal with misstatements or adjustments that are considered immaterial. We find that EGCs, which are not subject to the ICFR auditor attestation requirement and generally are also younger issuers than those in the other groups, restate their financial statements at higher rates than other issuers, whether we consider all restatements or only Item 4.02 restatements. For non-accelerated filers, which also are not subject to the ICFR auditor attestation requirement, we find that the percentage of issuers reporting restatements or Item 4.02 restatements is similar to that for accelerated filers who are subject to the ICFR auditor attestation requirement. We note that there is a greater proportion of low-revenue issuers, which we find below to have lower rates of restatement than other issuers,[149] in the non-accelerated filer category than in other categories. Below, when we separately consider issuers with revenues below $100 million, we find that the non-accelerated filers in this category are more likely to restate their financial statements than accelerated filers in the same revenue category.[150]

C. Discussion of Economic Effects

The costs and benefits of the proposed amendments, including impacts on efficiency, competition, and capital formation, are discussed below. We first address the population and characteristics of issuers that would newly qualify as non-accelerated filers under the proposed amendments, and then introduce certain categories of issuers that are used for comparison purposes. We next discuss the anticipated costs and benefits associated with the proposed change in applicability of the ICFR auditor attestation requirement. Following this discussion, we consider the costs and benefits associated with the proposed changes with respect to filing deadlines, exit thresholds, and other required disclosures. Finally, we consider the relative benefits and costs of the principal reasonable alternatives to the proposed amendments.

1. Affected Issuers

We estimate that the proposed amendments would result in 539 additional issuers being classified as non-accelerated filers, and therefore no longer subject to the filing deadlines and ICFR auditor attestation requirement applicable to accelerated

[147] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. ICFR effectiveness is based on the last amended management report for the fiscal year. Percentages in the first panel are computed out of all issuers of a given filer type in 2017 with SOX Section 404(a) management reports available in Ives Group Audit Analytics database, while percentages in the second panel are computed out of issuers of a given filer type reporting ineffective ICFR in their SOX Section 404(a) management report for 2017 (see the fourth row of Table 9). *See* note 116 above for details on the identification of filer type.

[148] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. Percentages are computed out of all issuers of a given filer type with a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. Accelerated and non-accelerated categories exclude EGCs that are in these filer categories. *See* note 116 above for details on the identification of filer type.

[149] *See* Table 14 below.

[150] *Id.*

filers.[151] Of these issuers, an estimated 525 issuers are accelerated filers (or large accelerated filers that have public float of less than $560 million) that would be newly classified as non-accelerated filers because they have annual revenues of less than $100 million and are eligible to be SRCs.[152] An additional 14 issuers are accelerated filers that would be newly classified as non-accelerated filers despite having revenues of at least $100 million because they have a public float of at least $50 million but less than $60 million.[153]

The total number of affected issuers includes an estimated 36 foreign private issuers and 181 EGCs.[154] It also includes an estimated 76 banks with $1 billion or more in total assets that are not EGCs.[155] Because the estimated 181 EGCs are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b), we estimate that the remaining 358 affected issuers would be newly exempt from this requirement. Of these 358 issuers, we expect that the 76 banks identified above would be subject to the FDIC auditor attestation requirement,[156] while the remaining 282 issuers would not be subject to any such auditor attestation requirement. Our estimate of the number of affected issuers excludes issuers for which we were unable to determine filer classification or revenues, which could represent up to approximately an additional 100 affected issuers.[157]

We estimate that approximately 90% of the affected issuers (whether including or excluding EGCs) have securities that are listed on national exchanges.[158] The affected issuers represent a type of issuer whose representation in public markets has decreased relative to the years before SOX. Over the past two decades, the number of issuers listed on major exchanges has decreased by about 40%,[159] but the decline has been concentrated among smaller size issuers. Specifically, the number of listed issuers with market capitalization below $700 million has decreased by about 65%,[160] and the number of listed issuers with less than $100 million in revenue has decreased by about 60%.[161]

Figure 4 presents the distribution of public float across the full sample of affected issuers.[162]

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[151] The number of affected issuers is based on staff estimates of: (i) The number of accelerated filers in 2017 that have prior fiscal year revenues of less than $100 million and are eligible to be SRCs (*i.e.,* excluding ABS issuers, RICs, BDCs, and subsidiaries of non-SRCs); (ii) the number of large accelerated filers in 2017 that have a public float of less than $560 million and prior fiscal year revenues of less than $100 million and are eligible to be SRCs; and (iii) the number of accelerated filers in 2017 that have a public float of at least $50 million but less than $60 million. The estimate of the number of affected issuers does not include large accelerated filers that have a public float of at least $560 million but less than $700 million even though such issuers could become non-accelerated filers under the proposed amendments if they became eligible to be SRCs under the SRC revenue test in the first year the SRC amendments became effective due to the limited horizon of this accommodation. *See* note 98 above (describing the accommodation provided in the SRC Adopting Release). Revenue data is sourced from XBRL filings, Compustat, and Calcbench. *See* note 116 above for details on the identification of the population of accelerated and large accelerated filers.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] Banks are identified as issuers with SIC codes of 6020 (commercial banks), 6021 (national commercial banks), 6022 (state commercial banks), 6029 (NEC commercial banks), 6035 (savings institutions, fed-chartered) or 6036 (savings institutions, not fed-chartered).

[156] If these banks are no longer subject to the SOX Section 404(b) auditor attestation requirement, their auditors may follow the AICPA's auditing standards in lieu of the PCAOB's auditing standards for the FDIC auditor attestation. *See* Section 18A of Appendix A to FDIC Rule 363 and the AICPA's AU–C Section 940.

[157] This estimate is based on staff analysis of XBRL filings using a computer program supplemented by hand collection and data from Ives Group Audit Analytics. The majority of these potential additional issuers are Canadian MJDS filers that are not required to disclose filer type or public float, though there are also domestic issuers and other foreign issuers for which some of the required data is not available. *See* note 116 above.

[158] Staff extracted information regarding whether issuers reported having securities registered under Section 12(b) of the Exchange Act from the cover page of annual report filings using a computer program supplemented with hand collection. *See* note 151 above for details on the identification of the population of affected issuers.

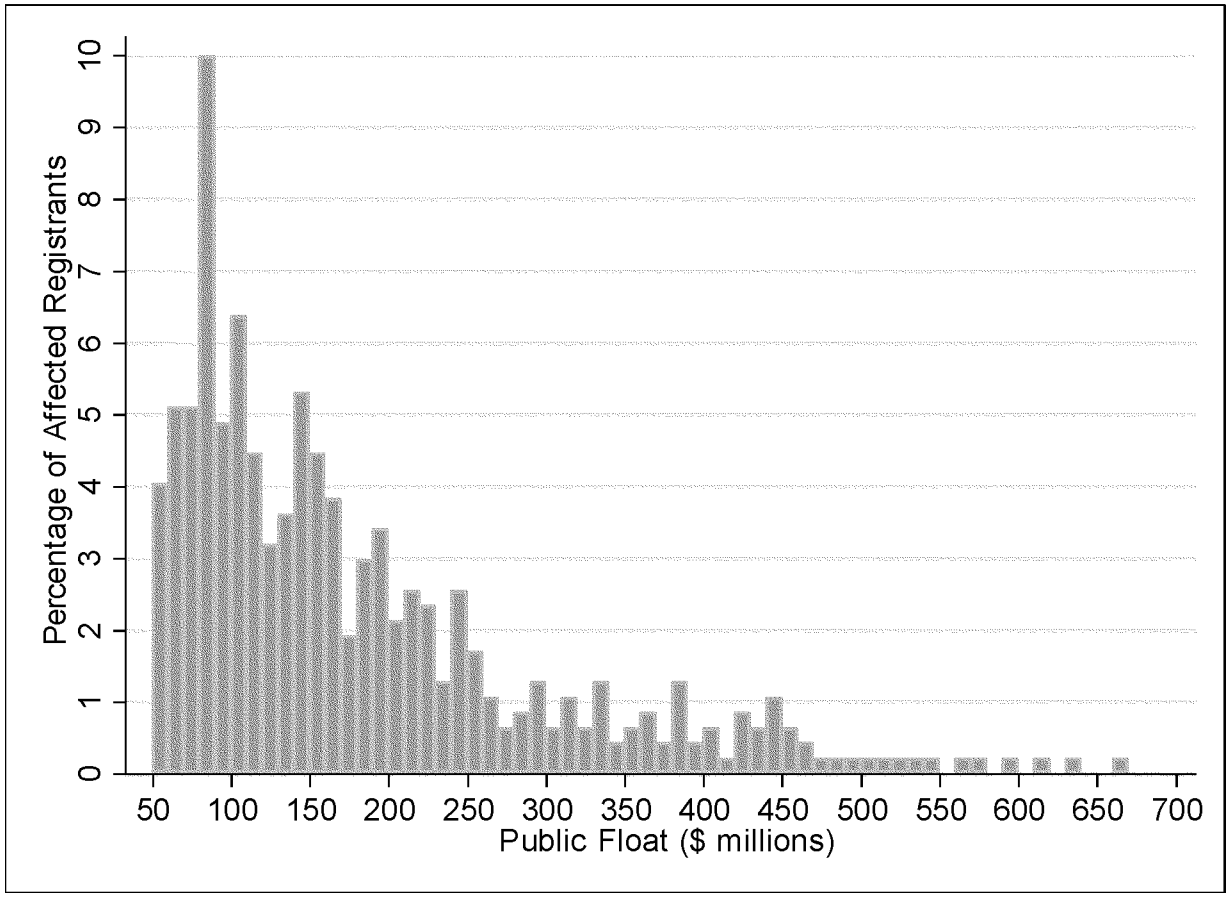
[159] This estimate is based on staff analysis of data from the Center for Research in Security Prices database for December 1998 versus December 2018. The estimate excludes RICs and issuers of ADRs.

[160] *Id.*

[161] This estimate is based on staff analysis of data from Standard & Poor's Compustat and Center for Research in Security Prices databases for fiscal year 1998 versus fiscal year 2017. The estimate excludes RICs and issuers of ADRs.

[162] Because of the accelerated filer transition provisions, some of the affected issuers have public float of at least $50 million but below $75 million. *See* note 137 above.

Figure 4. Distribution of public float of affected issuers based on classification in 2017[163]

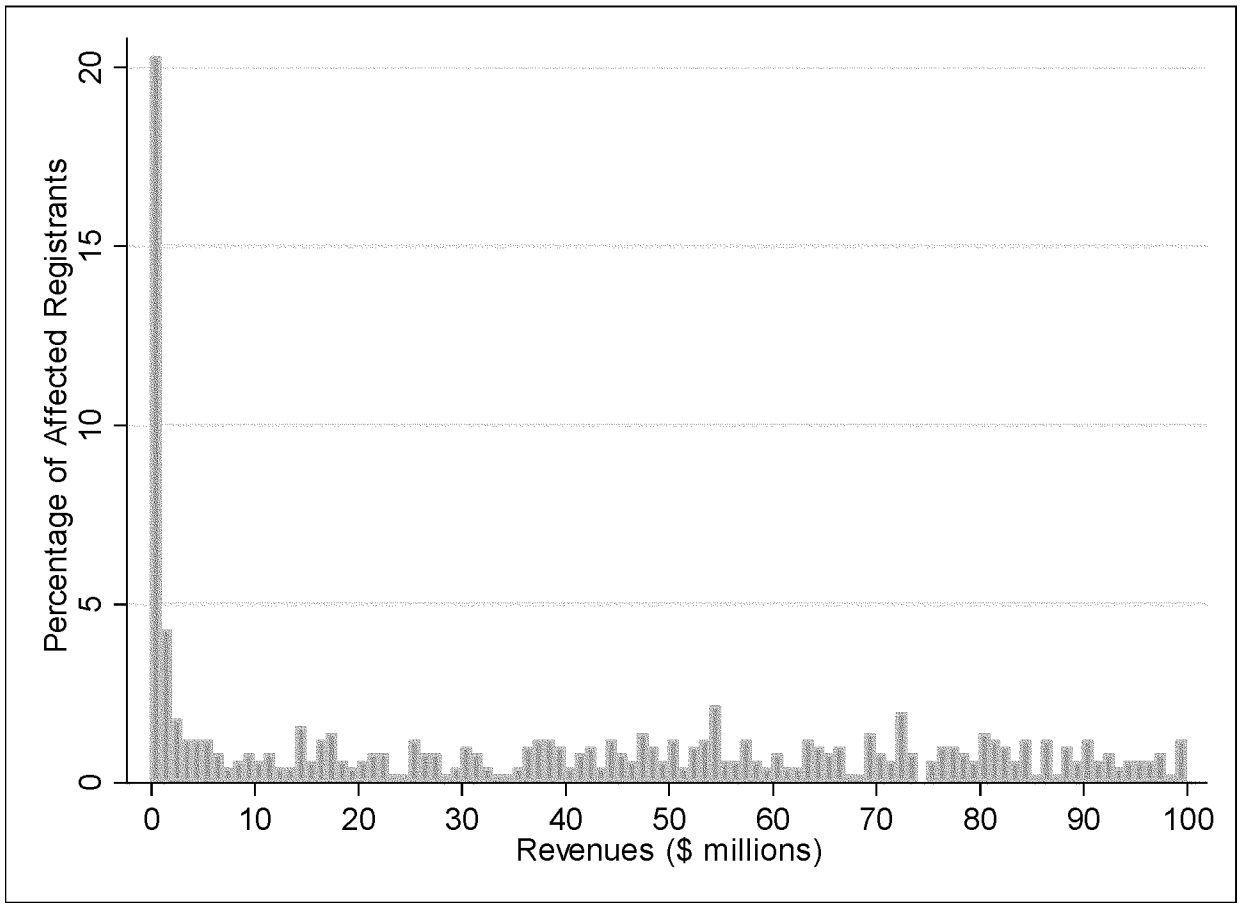


Relativeto the distribution for all accelerated filers presented in Figure 2, the sample of affected issuers is more strongly skewed toward lower levels of public float, with higher levels of public float only thinly represented. However, some of the affected issuers do have public float approaching the top of the range for accelerated filers.

Figure 5 presents the distribution of revenues across the 525 accelerated filers (or large accelerated filers with public float of less than $560 million) that would be newly classified as non-accelerated filers because they have revenues of less than $100 million.

[163] The estimates in this figure are based on staff analysis of data from XBRL filings. *See* note 151 above for details on the identification of the population of affected issuers.

Figure 5. Distribution of prior fiscal year revenues for affected issuers based on classification in 2017, amongst those with less than $100 million in revenues[164]



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Other than a concentration of issuers with zero or near zero revenues,[165] these affected issuers are fairly evenly distributed over different levels of revenue up to $100 million in revenues. The additional 14 affected issuers with revenues of at least $100 million but a public float of less than $60 million have revenues ranging from $120 million to $1.2 billion, with a mean of about $500 million in revenues.

The affected issuers are estimated to have median total assets of about $175 million, a median number of employees of about 125, and a median age of about 11 years.[166] For those issuers that would be newly exempt from the SOX Section 404(b) ICFR auditor attestation requirement, the median total assets, median number of employees and median issuer age are estimated to be slightly higher at about $190 million, 160 employees and about 18 years.[167] The affected issuers are heavily concentrated in the ''Pharmaceutical Products'' (30.2%), ''Banking'' (20.2%),[168] and ''Financial Trading'' (10.2%) industries, followed by ''Medical Equipment'' (5.2%), ''Business Services'' (4.3%), ''Electronic Equipment'' (3.9%) and ''Petroleum and Natural Gas'' (3.0%).[169] If the distribution of eligible issuers does not change over time, the proposed amendments could lead to a noticeable decrease in the presence of ''Pharmaceutical Products'' and ''Banking'' issuers in the pool of accelerated filers.

2. Comparison Populations

The proposed amendments would extend the exemption from the ICFR auditor attestation requirement to certain issuers that would be classified as accelerated filers under current rules and that have revenues of less than $100 million. To analyze the effects of this

[164] The estimates in this figure are based on staff analysis of data from XBRL filings, Compustat, and Calcbench. The revenue data used is from the last fiscal year prior to the annual report in calendar year 2017, because the SRC revenue test is based on the prior year's revenues. *See* note 151 above for details on the identification of the population of affected issuers.

[165] Approximately 13% of the estimated 525 affected issuers with revenues of less than $100 million and approximately 11% of the estimated 347 non-EGC affected issuers (which would be newly exempt from the SOX Section 404(b) ICFR auditor attestation requirement) with revenues of less than $100 million have zero revenues.

[166] These estimates are based on staff analysis of data from Compustat. *See* note 151 above for details on the identification of the population of affected issuers.

[167] *Id.* For the 282 affected issuers that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the median total assets and median number of employees are somewhat lower at about $110 million and 110 employees, and the median issuer age is similar at about 19 years.

[168] For the 282 affected issuers that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the proportion of ''Banking'' issuers drops to 5.7%. By contrast, the proportion in other industries does not change by more than a few percentage points.

[169] These estimates are based on staff analysis of data including SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. *See http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html. See* note 151 above for details on the identification of the population of affected issuers.

change, we would ideally compare, for the issuers that would be newly exempted, the effectiveness of their ICFR, their audit fees, and other key outcomes when they are subject to the ICFR auditor attestation requirement with the outcomes when they are not subject to this requirement. However, because the category of issuers that would be newly exempted is currently subject to the ICFR auditor attestation requirement, we are unable to assess their likely experience in the absence of this requirement by analyzing these issuers in isolation. Therefore, in addition to examining low-revenue accelerated filers that are subject to the ICFR auditor attestation requirement,[170] we also consider the experience of other low-revenue issuers that are not subject to this requirement: Non-accelerated filers (other than EGCs) and EGCs.[171]

Our analyses of data from 2014 through 2017 include, per year, 367 to 423 low-revenue accelerated filers (other than EGCs), 995 to 1,170 low-revenue non-accelerated filers (other than EGCs), and 136 to 647 low-revenue EGCs.[172] Non-accelerated filers (other than EGCs) and EGCs with revenues below $100 million have similar revenues and similar responsibilities regarding their internal controls (including being subject to the SOX Section 404(a) management ICFR reporting requirements) as the affected issuers, but are not subject to the ICFR auditor attestation requirement. Importantly, however, the issuers in these two comparison groups are not fully comparable to the affected issuers. While the affected issuers all have a public float of at least $50 million, and an estimated median of about $145 million in public float, non-accelerated filers and the majority of the EGCs in our sample have public float of less than $75 million. The median total assets are estimated to be about $20 million for low-revenue non-accelerated filers (other than EGCs) and $50 million for low-revenue EGCs, and the median number of employees is estimated to be about 60 for low-revenue non-accelerated filers (other than EGCs) and about 50 for low-revenue EGCs. These estimates represent roughly one-fourth of the median total assets and one-third of the median number of employees reported above for the affected issuers that would be newly exempt from the ICFR auditor attestation requirement.[173] In addition, while the affected issuers have generally been reporting companies for more than five years, and those that would be newly exempt from the ICFR auditor attestation requirement have a median age of 18 years,[174] EGC status generally is limited to issuers in the first five years after their initial public offering.

The issuers in both comparison groups will thus tend to be smaller, and the EGCs younger, than the affected issuers, which may reduce the reliability of estimates of the potential effects on audit fees, the effectiveness of ICFR, and restatement rates that are derived in part based on comparisons to these issuers.[175] We note that smaller issuers generally incur lower audit fees.[176] Also, research has associated having a lower market capitalization with having a greater likelihood of material weaknesses in ICFR, with some studies finding a similar association for issuers with less experience as a publicly-traded company.[177] Studies have similarly found that smaller issuers are often associated with a higher rate of restatements.[178] One study,[179] as well as our own analysis,[180] suggests that issuers that are very early in their lifecycle, as are EGCs, may also have a higher rate of restatements.

These associations may result in a greater disparity between the audit fees, rates of ineffective ICFR, and rates of restatement between the category of affected issuers and the two comparison samples than would be expected if these samples were more comparable in terms of their size and age. We believe that the experience of the issuers in these comparison groups is still informative to our analysis but note that they may be more likely to provide an upper bound rather than a direct reflection of the likely outcomes for the affected issuers as a result of the proposed amendments.

3. Potential Benefits of Eliminating the ICFR Auditor Attestation Requirement for Affected Issuers

The ICFR auditor attestation requirement has been associated with

[170] That is, the accelerated filers in this analysis exclude EGCs as well as ABS issuers and RICs.

[171] The issuers in these analyses exclude those that do not provide a SOX Section 404(a) management report on ICFR (*i.e.,* ABS issuers, RICs, and certain newly public issuers prior to filing their second annual report).

[172] The analyses also include, per year, 725 to 851 higher-revenue accelerated filers (other than EGCs), 384 to 424 higher-revenue non-accelerated filers (other than EGCs), and 37 to 223 higher-revenue EGCs. The sample size varies across years and is based on issuers of a given filer type with revenue data and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. *See* note 116 above for details on the identification of filer type.

[173] For those issuers that would be newly exempt from the ICFR auditor attestation requirement, the median total assets and median number of employees are estimated to be about $190 million and about 160 employees. *See* Section III.C.1 above.

[174] Age is measured based on the number of years of data available in the Compustat database, as is common in the academic literature, and likely exceeds the number of years after the issuer's initial public offering.

[175] We considered limiting our analysis to more narrow subsamples of these groups of issuers. For example, EGCs that have less than $100 million in revenues and are also accelerated filers would likely be more comparable to the affected issuers. However, we have identified only 19 such issuers in 2014, growing to 166 in 2017, which is not a sufficient number to allow us to statistically differentiate between, for example, the rates of restatements across different types of issuers. Therefore, in order to preserve a sample size sufficient for robust inference, we do not apply further filters to the issuers in these analyses beyond requiring that the necessary data be available.

[176] *See, e.g.,* David Hay, W. Robert Knechel, & Norman Wong, *Audit Fees: A Meta-analysis of the Effect of Supply and Demand Attributes,* 23(1) Contemporary Acct. Res. 141 (2006) (reviewing a large body of research on audit fees and determining that studies consistently find a positive relation between various measures of client size and audit fees, where the most common measure used was total assets, and that this relation accounts for a large proportion of the variation in audit fees); Charles Cullinan, Hui Du, and Xiaochuan Zheng, *Size Variables in Audit Fee Models: An Examination of the Effects of Alternative Mathematical Transformations,* 35(3) Auditing: A J. of Prac. and Theory 169 (2016).

[177] *See, e.g.,* Jeffrey Doyle, Weili Ge & Sarah McVay, *Determinants of Weaknesses in Internal Control Over Financial Reporting,* 44(½) J. of Acct. and Econ. 193 (2007) (finding a negative association of material weaknesses in ICFR with size, based on market capitalization, and with age, based on the number of years in the CRSP database) and Hollis Ashbaugh-Skaife, Daniel Collins, & William Kinney, *The Discovery and Reporting of Internal Control Deficiencies Prior to SOX-Mandated Audits,* 44(½) J. of Acct. and Econ. 166 (2007) (finding a negative association of material weaknesses in ICFR with size, based on market capitalization, but not finding a similar association with age, based on the number of years in the CRSP database, after controlling for other factors). For more recent evidence, *see* Weili Ge, Allison Koester, & Sarah McVay, *Benefits and Costs of Sarbanes-Oxley Section 404(b) Exemption: Evidence from Small Firms' Internal Control Disclosures,* 63 J. of Acct. and Econ. 358 (2017) (''Ge *et al.* 2017 Study'') (applying a model of the determinants of material weaknesses in ICFR based on these previous studies to data from 2007 through 2014, and finding a negative association of material weaknesses in ICFR with size, based on market capitalization, and with age, based on the number of years in the Compustat database).

[178] *See, e.g.,* Susan Scholz, *Financial Restatement Trends in the United States: 2003–2012,* Ctr. for Audit Quality White Paper (2014), available at *https://www.thecaq.org/financial-restatement-trends-united-states-2003-2012* (where size is measured based on total assets).

[179] *See, e.g.,* Gopal Krishnan, Emma-Riikka Myllymäk, & Neerav Nagar, *Does Financial Reporting Quality Vary Across Firm Life Cycle?,* Working Paper (finding a higher rate of restatements for issuers in the ''introduction'' stage of their life cycle relative to the ''mature'' stage, where life cycle stages are identified based on cash flow patterns), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3233512.*

[180] For the EGCs in our sample, based on data from Ives Group Audit Analytics, we estimate that those in their first two years after their initial disclosure of EGC status in 2014 through 2016 have approximately a 15% rate of restatements of their financial statements from these years, while those in their third and fourth years after initial disclosure of EGC status have approximately an 11% rate of restatements in these years.

significant costs. Exempting the affected issuers from this requirement therefore is likely to have the benefit of reducing compliance costs for these issuers. Given the disproportionate burden that the fixed component of compliance costs impose on smaller reporting issuers, as well as the likelihood that many of the affected issuers face financing constraints, these costs savings may enhance capital formation and competition. The discussion below explores the anticipated cost savings and their potential implications in detail.

We begin by summarizing evidence on the non-compliance costs and net costs of the ICFR auditor attestation requirement. We then estimate the anticipated effects on audit fees and on other compliance costs of eliminating this requirement for the affected issuers, using reported audit fees, survey data, and existing studies. Finally, we discuss the implications of the cost savings and other potential benefits.

a. Evidence on Possible Indirect Costs and Net Costs of ICFR Auditor Attestation Requirement

The ICFR auditor attestation requirement may impose costs on issuers and investors beyond the direct costs of compliance. For example, an increased focus on ICFR as a result of the ICFR auditor attestation requirement could have negative effects on issuer performance, if it creates a distraction from operational matters or reduces investment or risk-taking.[181] Along these lines, studies have documented a decrease in investment and risk-taking by U.S. companies compared to companies in other countries around the passage of SOX.[182] However, others have demonstrated that these findings are merely the continuation of a trend that began many years before the passage of SOX[183] and that they do not appear to be driven by the applicability of the ICFR auditor attestation or SOX Section 404(a) management ICFR reporting requirements.[184] Another study associates the SOX Section 404 requirements with a decrease in patents and patent citations, but the findings are limited to the early years of implementation of these requirements and the study is not able to distinguish to what extent the effects are attributable to the SOX Section 404(a) management ICFR reporting requirements versus the SOX Section 404(b) ICFR auditor attestation requirement.[185]

Our analysis separately considers the costs and benefits of extending the exemption from the ICFR auditor attestation requirement. While we are unable to quantify the extent to which the expected cost savings exceed any loss of benefits associated with the ICFR auditor attestation requirement, we note that researchers have attempted to estimate such ''net costs'' of the requirement in specific contexts. For example, studies have demonstrated that smaller reporting issuers find the total compliance costs associated with the ICFR auditor attestation requirement to be significant by providing evidence that non-accelerated filers may seek to avoid crossing the $75 million public float threshold and becoming accelerated filers.[186] Issuers near or below this threshold have been found to be more likely than comparable issuers to take actions that may reduce or avoid an increase in their public float, such as disclosing more negative news in the second fiscal quarter (when public float is measured), increasing payouts to shareholders, reducing investment in property, plant, equipment, intangibles and acquisitions, and increasing the number of shares held by insiders.[187] One study uses this avoidance behavior to estimate the net costs of compliance with the ICFR auditor attestation requirement for issuers close to the $75 million public float threshold.[188] The study concludes that the overall costs, net of any benefits, of the ICFR auditor attestation requirement for these issuers is roughly $1 million to $2 million per year, but we note that the methodology used to translate the avoidance behavior into a dollar cost may be unreliable.[189]

One study attempts to quantify and compare certain costs and benefits of exempting non-accelerated filers from the ICFR auditor attestation requirement, focusing on those costs and benefits that the study deems to be measurable, and finds that the cost savings associated with exempting these issuers (an estimated $388 million in aggregate audit fee savings) have been less than the lost benefits (*e.g.,* an aggregate $719 million in lower earnings) in aggregate present value terms.[190]

Studies have also used stock market reactions to changes in the applicability of the ICFR auditor attestation requirement to estimate its net costs or benefits, because the stock market valuation should incorporate both expected costs and expected benefits from a shareholder's perspective. We

[181] *See* John Coates & Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* 28(3) Acct. Horizons 627 at 643–645 (2014) (''Coates and Srinivasan 2014 Study'') (discussing these possible effects and summarizing related studies).

[182] *Id.*

[183] *Id.*

[184] *See* Ana Albuquerque & Julie Zhu (2018), *Has Section 404 of the Sarbanes-Oxley Act Discouraged Corporate Risk-Taking? New Evidence from a Natural Experiment,* Mgmt. Sci. (forthcoming) (using the staggered implementation of SOX Section 404 to better identify its effects on smaller reporting issuers, with public float of less than $150 million, and finding no evidence of a decrease in the investment and risk-taking activities for issuers that were subject to SOX Section 404 versus those that were not), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049232.*

[185] *See* Huasheng Gao & Jin Zhang, *SOX Section 404 and Corporate Innovation,*'' J. of Fin. and Quantitative Analysis (2018) (forthcoming), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3130588.*

[186] *See, e.g.,* Peter Iliev, *The Effect of SOX Section 404: Costs, Earnings Quality, and Stock Prices,* 45 J. of Fin. 1163 (2010) (''Iliev 2010 Study'') (finding that a disproportionate number of issuers had a public float of just under $75 million in 2004, when auditor attestations of ICFR and management ICFR reports were first required for accelerated filers, but not in earlier years).

[187] *See* F. Gao, J.S. Wu,, & J. Zimmerman, *Unintended Consequences of Granting Small Firms Exemptions from Securities Regulation: Evidence from the Sarbanes-Oxley Act,* 47(2) J. of Acct. Res. 459 (2009) and M. E. Nondorf, Z. Singer, & H. You, *A Study of Firms Surrounding the Threshold of Sarbanes–Oxley Section 404 Compliance,* 28(1) Advances in Acct. 96 (2012). *See also* F. Gao, *To Comply or Not to Comply: Understanding the Discretion in Reporting Public Float and SEC Regulations,* 33(3) Contemporary Acct. Res. 1075 (2016) (presenting evidence that companies that expected higher compliance costs may have used discretion in defining affiliates in order to report lower float).

[188] *See* Dhammika Dharmapala, *Estimating the Compliance Costs of Securities Regulation: A Bunching Analysis of Sarbanes-Oxley Section 404(b),* Working Paper (2016), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885849.*

[189] *Id.* This paper estimates a net cost of compliance for companies near the threshold of $4 million to $6 million for a few years of compliance (*i.e.,* $1 million to $2 million per year). The analysis leading to this estimate relies on the relation between public float and market capitalization for other companies to approximate the stock market value foregone by those that are estimated to be manipulating their public float downwards. However, we note that the ratio of market capitalization to public float for other companies may simply reflect their propensity towards having affiliated ownership rather than being a reliable basis with which to measure the cost incurred by manipulating public float.

[190] We note that the estimates in this study rely on a number of critical assumptions and estimations. *See* Ge *et al.* 2017 Study, note 177 above (estimating the effect on audit fees by comparing the audit fees of non-accelerated filers to those of accelerated filers with market capitalization of $300 million or less; and estimating the effect on earnings by estimating the percentage of non-accelerated filers that may newly disclose ineffective ICFR upon entering an ICFR auditor attestation requirement, based on changes in the rate of disclosure of ineffective ICFR by issuers that transition into accelerated filer status, and applying to this estimate a further estimate of the difference in return on assets that could be associated with such disclosure and any related remediation, based on the results of a multivariate regression relating issuers' change in return on assets to a number of factors, including whether or not they disclosed and remediated ineffective ICFR).

focus on studies that consider events that allow the effects of the ICFR auditor attestation requirement to be isolated from those of the other requirements that were imposed by SOX, as many early studies did not isolate the effects of the ICFR auditor attestation requirement from other changes required by the same legislation, such as the audit committee requirements of SOX Section 301[191] and the certifications required pursuant to SOX Section 302. Regardless, the results of the studies we focus on have been mixed, perhaps due, in part, to changes over time in how the ICFR auditor attestation requirement has been implemented. For example, a study analyzing the response to announcements of initial delays in the application of the requirements to some issuers found that the ICFR auditor attestation requirement was associated with a net reduction in stock market valuation for foreign issuers.[192] On the other hand, a study of the response to the later permanent exemption from the ICFR auditor attestation requirement for some issuers found that this requirement was associated with a net increase in stock market valuation for smaller reporting issuers.[193] This finding is consistent with studies that conclude that the requirement is value-enhancing based on a negative stock market reaction to issuers excluding acquired operations from management's assessment of ICFR and the ICFR auditor attestation, though these studies do not determine the extent to which this effect is attributable to the ICFR auditor attestation.[194] Similarly, a study of smaller reporting issuers that switched regimes over time found that being subject to the ICFR auditor attestation requirement was associated with an increase in stock market valuation for these issuers.[195]

The rate of voluntary compliance with the ICFR auditor attestation requirement among exempt issuers has generally been low,[196] which may indicate that exempt issuers, when considering their own net cost or benefit of compliance, have typically deemed it to be more beneficial to expend these resources on other uses. Finally, when considering the net tradeoff between costs and benefits for accelerated filers with low revenues in particular, we also re-examined data from the SEC-sponsored survey of financial executives conducted during December 2008 and January 2009 (''2008–09 Survey'').[197] While the results of this survey might not be directly applicable a decade later, particularly given the changes over time discussed in Section III.B.1 above, they provide some suggestive evidence that low-revenue issuers are more likely than other accelerated filers to believe that the costs of complying with SOX Section 404 substantially outweigh the benefits. In particular, when asked about the net costs or benefits of complying with SOX Section 404, 30% of respondents at an accelerated filer with revenues below $100 million indicated that the costs far outweighed the benefits, in contrast to 14% of respondents at an accelerated filer with greater revenues.[198]

b. Potential Reduction in Audit Fees

While issuers disclose their total audit fees, they are not required to disclose the portion of these fees that is attributable to the ICFR auditor attestation requirement. Studies of the initial implementation of the ICFR auditor attestation requirement found that it was associated with a roughly 100% increase in audit fees for small accelerated filers.[199] However, these early estimates likely include some initial start-up costs, which were found to diminish over time.[200] Further, these estimates do not incorporate the effect of later developments such as the adoption of AS 2201 (previously AS No. 5), which was expected to reduce compliance costs for smaller issuers, and the adoption of the new risk assessment auditing standards, which may reduce the incremental cost of an integrated audit over a financial-statement only audit.

We therefore begin by considering current audit fees for accelerated filers that are subject to the ICFR auditor attestation requirement and have revenues of less than $100 million, as well as issuers in our comparison populations (non-accelerated filers, other than EGCs, and EGCs, neither of which is required to comply with the ICFR auditor attestation requirement) that also have revenues of less than $100 million. Table 12 presents the average total audit fees for these categories of filers.

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[191] 15 U.S.C. 78f.

[192] *See* Iliev 2010 Study, note 186 above. This study also finds a net reduction in value for small domestic issuers from the SOX Section 404 requirements, but is not able, for these issuers, to isolate the effect attributable to the ICFR auditor attestation requirement versus the SOX Section 404(a) management ICFR reporting requirement.

[193] *See* Kareen Brown, Fayez Elayan, Jingyu Li, Emad Mohammad, Parunchana Pacharn, & Zhefeng Frank Liu, *To Exempt or not to Exempt Non-Accelerated Filers from Compliance with the Auditor Attestation Requirement of Section 404(b) of the Sarbanes-Oxley Act,* 28(2) Res. in Acct. Reg. 86 (2016) (''Brown *et al.* 2016 Study''). *See also* Christina Leuz & Peter Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54(2) J. of Acct. Res. 525 at 566–569 (2016) (''Leuz and Wysocki 2016 Study'') (summarizing mixed evidence from earlier event studies related to SOX that were unable to differentiate the effects of the ICFR auditor attestation requirement from other requirements imposed by SOX).

[194] *See, e.g.,* Robert Carnes, Dane Christensen, & Phillip Lamoreaux, *Investor Demand for Internal Control Audits of Large U.S. Companies: Evidence from a Regulatory Exemption for M&A Transactions,* 94(1) The Acct. Rev. 71 (2019) (''Carnes *et al.* 2019 Study'').

[195] *See* Hongmei Jia, Hong Xie, & David Ziebart, *An Analysis of the Costs and Benefits of Auditor Attestation of Internal Control over Financial Reporting,* Working Paper (2014) (''Jia *et al.* 2014 study''), available at *https://www.lsu.edu/business/accounting/files/researchseries/20141027JXZ.PDF.*

[196] *See* note 115 above.

[197] *See* 2009 SEC Staff Study, note 123 above, and Cindy Alexander, Scott Bauguess, Gennaro Bernile, Alex Lee, & Jennifer Marietta-Westberg, *The Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,* 56 J. of Acct and Econ. 267 (2013) (''Alexander *et al.* 2013 Study'').

[198] These estimates are based on staff analysis of data from the 2008–09 Survey. The analysis considers responses pertaining to the most recent year for which a given respondent provided a response. We note that the rate of responses to the question about net benefits was lower than for other questions. *See* the 2009 SEC Staff Study, note 123 above, and Alexander *et al.* 2013 Study, note 197 above, for details on the survey and analysis methodology.

[199] *See, e.g.,* William Kinney & Marcy Shepardson (2011), *Do Control Effectiveness Disclosures Require SOX 404(b) Internal Control Audits? A Natural Experiment with Small U.S. Public Companies,* 49(2) J. of Acct. Res. 413 (''Kinney and Shepardson 2011 Study'') (considering those accelerated filers that have newly crossed the $75 million public float threshold in a given year); Iliev 2010 Study, note 186 above (considering those accelerated filers with between $75 million and $100 million in public float); Michael Ettredge, Matthew Sherwood, & Lili Sun (2017), *Effects of SOX 404(b) Implementation on Audit Fees by SEC Filer Size Category,* 37 (1) J. of Acct. and Pub. Pol'y 21 (considering accelerated filers as a category, as opposed to large accelerated filers, but also finding a contemporaneous 42.7% increase in audit fees for non-accelerated filers even though were not subject to the independent auditor attestation requirement); and Susan Elridge & Burch Kealey, *SOX Costs: Auditor Attestation under Section 404,* Working Paper (2005), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=743285 (considering accelerated filers in the lowest quintile of total assets).*

[200] *See, e.g.,* Alexander *et al.* 2013 Study, note 197 above.

TABLE 12—AVERAGE TOTAL AUDIT FEES IN DOLLARS BY FILER TYPE [201]

	Issuers with revenues <$100 million		
	Accelerated (ex. EGCs)	Non-Accelerated (ex. EGCs)	EGC
2014	$424,019	$179,925	$199,744
2015	436,190	183,077	463,403
2016	446,381	167,214	317,433
2017	445,079	165,307	288,860
Average/year	*437,917*	*173,881*	*317,360*

For these low-revenue issuers, the difference between the average annual audit fees for accelerated filers and the comparison populations represents, as a percentage of the total audit fees for accelerated filers, roughly 25 to 60% of those total audit fees.[202]

Some part of this 25 to 60% difference is likely attributable to the ICFR auditor attestation requirement. However, as discussed in Section III.C.2, audit fees have been found in general to increase with total assets and other measures of issuer size, and the median issuer in the comparison populations is substantially smaller than the median affected issuer (in terms of total assets, number of employees, or public float). To account for the fact that some portion of the 25 to 60% difference in audit fees across these groups may be attributable to their difference in size,[203] we select an estimate at the low end of the range, resulting in a percentage estimate of 25% of total audit fees that would be saved by issuers newly exempted from the ICFR auditor attestation requirement.

This estimate is generally consistent with a range of estimates from other sources that use data from after the 2007 change in the ICFR auditing standard, but that are not focused on low-revenue issuers. These other estimates, which range from approximately five to 35% of total audit fees, are based on a variety of samples and methodologies. For example, the 2008–09 Survey asked respondents what portion of their audit fees were attributable to the ICFR auditor attestation. The average reported percentage for the fiscal year in progress at the time of the survey was 34% for issuers with public float between $75 million and $700 million.[204] One study considered the difference in the change in audit fees from 2003 through 2014 for non-accelerated filers versus smaller accelerated filers (*i.e.,* those with market capitalization less than $300 million) and concluded that about 26% of the total audit fees for smaller accelerated filers was attributable to the ICFR auditor attestation requirement.[205] This study also found a similar percentage effect when considering the change in audit fees for issuers that newly entered accelerated filer status.[206] A different study that controls for additional factors that could be associated with total audit fees finds a more modest effect, estimating that, on average, a five percent increase in audit fees was attributable to transitioning to accelerated filer status over the period from 2007 to 2013 (compared to an average increase of 59.52% for the period from 2002 to 2006, before the 2007 change in the ICFR auditing standard).[207]

We note that these studies do not separately consider the audit fees of low-revenue issuers and may not fully incorporate the effects of recent developments, such as the increased focus of PCAOB inspections on ICFR auditor attestations beginning around 2010 and the new risk assessment auditing standards. Given the average total audit fees of about $440,000 per year for accelerated filers with revenues of less than $100 million, we preliminarily estimate that about 25% of these fees, or about $110,000 per year, would be saved on average by the affected issuers as a result of the proposed amendments. The audit fee savings are expected to vary across the affected issuers, with some experiencing smaller savings and some experiencing much larger savings depending on their individual circumstances. For example, a few of the commenters to the SRC Proposing Release cited costs of $400,000 to over $1 million associated with the ICFR auditor attestation requirement (though it is possible that these estimates include costs other than audit fees, which are discussed below).[208] Further, we note that some issuers may voluntarily choose to continue to make these expenditures if they deem the benefits of the ICFR auditor attestation to exceed the cost, and that the extent of savings may be affected if auditors continue to test the operating effectiveness of some controls as part of their financial statement audit. Our estimate is subject to significant uncertainty, given the lack of a perfect comparison group, as discussed above, and the fact that it is difficult to isolate the recurring cost of the ICFR auditor attestation requirement from the effects of other key factors that may affect audit fees in our sample, such as the recent

[201] The estimates in the table are based on staff analysis of data from Ives Group Audit Analytics and include issuers in this revenue category and of each filer type with revenue data and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. *See* note 116 above for details on the identification of filer type.

[202] For EGCs, the average difference is $437,917 minus $317,360, or $120,557, which is about 27.5% of $437,917. For non-accelerated filers other than EGCs, the average difference is $437,917 minus $173,881, or $264036, which is about 60.3% of $437,917.

[203] It is also possible that these estimates may be inflated due to the cost in recent years of transitioning to the 2013 COSO framework for evaluating ICFR. *See* note 111 above.

[204] *See* 2009 SEC Staff Study, note 123 above. *See also* 2013 GAO Study, note 115 above (finding, based on a survey conducted in December 2012 through February 2013, that 29% of audit fees for companies with a market capitalization of less than $10 billion and that obtained an auditor attestation in 2012 was attributable to these attestations).

[205] *See* Ge *et al.* 2017 Study, note 177 above (stating this difference as an increase of about 36% over the total audit fees of non-accelerated filers, which represents 0.36 divided by 1.36 or about 26% of the total audit fees of the small accelerated filers).

[206] *See* Ge *et al.* 2017 Study, note 177 above (finding an increase in audit fees of about 35%, representing 0.35 divided by 1.35 or about 26% of the total audit fees as a new accelerated filer).

[207] *See* Jia *et al.* 2014 Study, note 195 above (performing a regression analysis of total audit fees, including control variables for company size, auditor type, company and audit complexity, company performance, company operational risk, and financial risk).

[208] *See* letters from Acorda *et al.,* Calithera, and CONNECT. These estimates are also generally consistent with the estimate set forth by a presenter at a recent Advisory Committee on Small and Emerging Companies (''ACSEC'') meeting. The presenter stated that some biotechnology companies that anticipate losing their status as EGCs in the next few years ''believe they will incur somewhere between $150,000 to $350,000 in additional audit fees, $50,000 to $150,000 in other consulting costs and either $40,000 or as much as $200,000 for internal labor.'' *See* William Newell, Presentation at ACSEC Meeting 49 to 54 (Sept. 13, 2017) (''William Newell 2017 Presentation Transcript''), available at *https://www.sec.gov/info/smallbus/acsec/acsec-transcript-091317.pdf. See also* William J. Newell, *Sarbanes-Oxley Section 404(b): Costs of Compliance and Proposed Reforms,* Presentation at ACSEC Meeting (Sept. 13, 2017) available at *https://www.sec.gov/info/smallbus/acsec/william-newell-acsec-091317.pdf.*

changes in accounting standards discussed above. Also, the costs of obtaining an ICFR auditor attestation may decline over time with the adoption of more automated controls testing and process automation.

c. Additional Potential Compliance Cost Savings

The ICFR auditor attestation requirement is associated with substantial other compliance costs beyond audit fees, including outside vendor costs and internal labor costs.[209] However, these costs are difficult to measure because they are not required to be reported. Practitioner studies based on surveys of issuers often report non-audit costs of the internal control assessment and reporting requirements of SOX Section 404 in particular or of SOX in general, but the costs attributable to the ICFR auditor attestation requirement versus the SOX Section 404(a) management ICFR reporting requirements or other requirements are generally not broken out separately.[210]

The 2008–09 Survey asked respondents to report their non-audit costs of SOX Section 404 in general, such as their outside vendor costs, labor, and non-labor costs (such as software, hardware and travel costs), as well as the percentage of the outside vendor costs and labor hours that were attributable to the ICFR auditor attestation requirement. For the fiscal year in progress at the time of the survey, the mean (median) annual costs for issuers with between $75 million and $700 million in public float were $134,691 ($50,000) for outside vendors, $489,302 ($242,000) for internal labor costs, and $79,348 ($20,000) for non-labor costs. Respondents indicated that, on average, ten percent of the outside vendor costs and 25% of the internal labor costs were attributable to the ICFR auditor attestation requirement. A breakdown was not provided for the non-labor costs, which we believe are primarily attributable to management's ICFR responsibilities under SOX Section 404(a) rather than the ICFR auditor attestation.

The average non-audit costs attributable to the ICFR auditor attestation requirement at the time of the survey were thus approximately $125,000 per year ($134,691 times ten percent, plus $489,302 times 25%). In more recent years, the adoption of the new risk assessment auditing standards may have increased the non-audit costs of a financial statement only audit, and thus reduced the incremental costs attributable to the ICFR auditor attestation requirement. We therefore adjust the historical cost downward slightly and estimate that the average non-audit costs attributable to the ICFR auditor attestation requirement are approximately $100,000 per year. This estimate is subject to uncertainty because it is unclear exactly how the current costs may differ from the survey responses a decade ago, and the costs may be different for low-revenue issuers. As in the case of audit fees, some of the affected issuers are expected to experience lower cost savings while others would experience greater savings, depending on their individual circumstances. For example, some issuers have reported potential cost savings other than audit fees ranging from about $110,000 to about $350,000.[211]

d. Implications of the Cost Savings

While we estimate the average compliance cost associated with the ICFR auditor attestation requirement for the affected issuers, it is more difficult to discern whether incurring the costs of this requirement represents the most effective use of funds for these issuers. As discussed in Section III.C.4.c below, issuers for whom the requirement is eliminated may determine that it is worthwhile to use these funds to voluntarily undergo an audit of ICFR.[212] Alternatively, some of these issuers could directly invest the compliance cost savings in their control systems, or in improving their operations and prospects for growth.

In total, we estimate an average cost savings of $210,000 per issuer per year, with some of the affected issuers experiencing lesser or greater savings. This represents a significant cost savings for issuers with less than $100 million in revenue and may thus have beneficial economic effects on competition and capital formation.

In particular, because of the fixed costs component of compliance costs, smaller issuers generally bear proportionately higher compliance costs than larger issuers. For example, we estimate that total audit fees for the past three years have represented about 22% of revenues on average for accelerated filers with less than $100 million in revenues, versus 0.5% of revenue for those above $100 million in revenues. Reducing the affected issuers' costs would reduce their overhead expenses and may enhance their ability to compete with larger issuers. Importantly, low-revenue issuers are likely to face financing constraints because they do not have access to internally-generated capital.[213] Resources saved by the affected parties therefore may be likely to be put to productive use,[214] such as towards capital investments, which would enhance capital formation.

The alleviation of these costs could be a positive factor in the decision of additional companies to enter public markets,[215] particularly in the case of companies that expect low levels of revenue to persist for many years into the future. That is, if future compliance costs associated with ICFR auditor attestations weigh against these companies becoming publicly traded,

[209] *See, e.g.,* Leuz and Wysocki 2016 Study, note 193 above.

[210] *See, e.g.,* Protiviti 2018 Report, note 135 above (finding, for example, total internal costs associated with all aspects of SOX compliance to be $282,900 for 2018 for respondents with less than $100 million in revenues) and SOX & Internal Controls Professionals Group, Moss Adams LLP, and Workiva (2017), ''2017 State of the SOX/Internal Controls Market Survey'' (''2017 SICPG Survey Report''), available at *www.mossadams.com/landingpages/2017-sox-and-internal-controls-market-survey.*

[211] For example, a presenter at a recent ACSEC meeting provided four examples of biotechnology companies with actual or expected costs other than audit fees attributable to audits of ICFR of $190,000 (Example A), $135,000 (Example B), greater than $110,000 (Example C), and $175,000 (Example D), including the costs of outside vendors, consultants and internal labor. The presenter also cited discussions with other companies that are currently EGCs but ''believe they will incur . . . $50,000 to $150,000 in other consulting costs and either $40,000 or as much as $200,000 for internal labor.'' *See* William Newell 2017 Presentation Transcript, note 208 above. *See also* BIO White Paper, *Science or Compliance: Will Section 404(b) Compliance Impede Innovation by Emerging Growth Companies in the Biotech Industry?* (February 2019) (''BIO Study''), available at *https://www.bio.org/sites/default/files/BIO_EGC_White_Paper_02_11_2019_FINAL.pdf* (finding that five biotechnology companies incurred an average cost of outside vendors and consultants related to SOX Section 404(b) compliance of $192,200 and an average cost of associated internal labor of $163,000, for a total of $355,200, based on the responses of these companies, which may or may not overlap with the companies cited in the presentation to ACSEC, to a survey).

[212] *See* letter from BIO (supporting allowing ''issuers and their investors the flexibility to determine for themselves whether Section 404(b) is relevant to their business'').

[213] For example, one commenter indicated that ''pre-revenue small businesses utilize only investment dollars to fund their work'' and that any cost savings thus ''could lead to funding for a new life-saving medicine.'' *See* letter from BIO.

[214] For example, in a survey of issuers in the biotech industry, among 11 biotech EGCs that responded to a question regarding how an extension of the exemption from the independent auditor attestation requirement would affect them given the costs associated with the requirement, eight out of the 11 issuers indicated that they expected a positive impact on investments in research and development and six out of the 11 issuers indicated that they expected a positive impact on hiring employees. *See* BIO Study, note 211 above.

[215] *See, e.g.,* letter from ICBA.

reducing these expected future costs may enhance capital formation in the public markets and the efficient allocation of capital at the market level. However, research investigating the link between SOX and companies exiting or choosing not to enter public markets has been inconclusive.[216] Further, newly public issuers can already avail themselves of an exemption from the ICFR auditor attestation requirement for at least one and generally up to five years after their initial public offering.[217] To the extent that companies may be more focused on costs during those first five years or other factors associated with the decision to go public, the impact of the proposed amendments on the number of publicly traded companies may be limited.

4. Potential Costs of Eliminating the ICFR Auditor Attestation Requirement for Affected Issuers

Exempting the affected issuers from the ICFR auditor attestation requirement may result, over time, in management at this category of issuers being less likely to maintain effective ICFR, which in turn may result in less reliable financial statements, on average, for these issuers. The discussion below explores this potential effect and its implications in detail. We also consider two mitigating factors that could be associated with the affected issuers on average, though they may not apply equally to all of the affected issuers. First, low-revenue issuers may be less susceptible to the risk of certain kinds of misstatements, such as errors associated with revenue recognition.[218] Second, in many cases, the market value of such issuers may be driven to a greater degree by their future prospects than by the current period's financial statements, which may affect how, on average, investors use these issuers' financial statements.

Exempting the affected issuers from the ICFR auditor attestation requirement could also reduce the information available to investors for gauging the reliability of these issuers' financial statements. In this regard, we discuss below the potential effects related to the identification and disclosure of material weaknesses in ICFR at the affected issuers. However, given the recent findings discussed in Section III.C.4.a below on how ICFR auditor attestations may provide limited information about the risk of future restatements,[219] we preliminarily believe that any such effect would not meaningfully affect investors' overall ability to make informed investment decisions.

a. Considerations and Evidence Regarding the Effects of ICFR Auditor Attestations on Financial Reporting

This section summarizes a number of broad economic considerations related to the possible effects of an ICFR auditor attestation requirement on financial reporting in order to provide context for the more detailed analysis of the costs of exempting the affected parties from this requirement that follows. As discussed below, the anticipated effects of changes to the population of issuers subject to the ICFR auditor attestation requirement will depend on the characteristics of the specific group of issuers that would be affected. In this regard we note that prior research has not focused on the effects of the ICFR auditor attestation requirement on low-revenue issuers in particular. As discussed in Section III.B.1, there also have been significant changes over time in the implementation of the ICFR auditor attestation requirement, the standards applying to a financial statement audit even in the absence of an audit of ICFR, and the execution of audits of financial statements and of ICFR, which may have had the effect of reducing both the incremental costs and incremental benefits of an ICFR auditor attestation since the periods studied in much of the existing research. We therefore acknowledge that, while we believe that consideration of the past research is an important part of our analysis, these factors limit our ability to rely on the findings of past research to predict how the proposed amendments would affect the particular class of issuers implicated by this rulemaking.

ICFR auditor attestations can have two primary types of benefits. First, the ICFR auditor attestation reports can provide incremental information to investors about the reliability of the financial statements. Second, the reliability of the financial statements can itself be enhanced. That is, the expectation of, or process involved in, the ICFR auditor attestation could lead issuers to maintain better controls, which could lead to more reliable financial reporting. Importantly for our evaluation of these possible benefits, however, we do not directly observe the effectiveness of ICFR and the reliability of financial statements, but only the associated disclosures by issuers. For example, while restatements may indicate that controls have failed, such restatements are often predicated on the underlying misstatements being detected. Given such limitations with the available data, the analysis in existing studies and in this release is necessarily less than definitive.

Regarding the first possible benefit of ICFR auditor attestations, academic research provides some evidence that ICFR auditor attestation reports contain information about the reliability of financial statements, but also demonstrates that the incremental information provided by these reports may be limited. The 2011 SEC Staff Study summarizes evidence that ICFR auditor attestations generally resulted in the identification and disclosure of material weaknesses that were not previously identified or whose severity was misclassified when identified by management in its assessment of ICFR, and that investor risk assessments and investment decisions were associated with the findings in auditor attestation reports.[220]

However, more recent studies have found that auditor identification of material weaknesses in ICFR tends to be concurrent with the disclosure of restatements, rather than providing advance warning of the potential for restatements.[221] While these findings do not imply that ICFR auditor attestation reports fail to provide any useful information about the risk of future restatements,[222] they demonstrate that

[216] There is some evidence of a decreased rate of initial public offerings and an increased rate of going private transactions and deregistrations in the United States after SOX. However, it is unclear to what extent these changes can be attributed to SOX (or to the auditor attestation requirement in particular) versus other factors, and to what extent these changes are a cause for concern. *See e.g.,* Coates and Srinivasan 2014 Study, note 181 above, at 636–640 (summarizing a number of studies in this area).

[217] *See* note 88 above regarding the exemption of EGCs from the auditor attestation requirement.

[218] *See* BIO Study, note 211 above (finding that biotechnology EGCs have lower restatement frequencies than other issuers, after controlling for other factors, and attributing this to their ''absence of product revenue'' based on findings that revenue recognition is one of the most frequent drivers of financial restatements).

[219] *See* notes 228 through 232 below and accompanying text.

[220] *See* 2011 SEC Staff Study, note 49 above, at 97–99 and 102–104. *See also* Coates and Srinivasan 2014 Study, note 181 above.

[221] *See, e.g.,* Sarah Rice & David Weber, *How Effective is Internal Control Reporting under SOX 404? Determinants of the (Non-)Disclosure of Existing Material Weaknesses,* 50(3) J. OF ACCT. RES. 811 (2012); William Kinney, Roger Martin, & Marcy Shepardson, *Reflections on a Decade of SOX 404(b) Audit Production and Alternatives,* 27(4) Acct. Horizons 799 (2013); and Daniel Aobdia, Preeti Choudhary, & Gil Sadka, *Do Auditors Correctly Identify and Assess Internal Control Deficiencies? Evidence from the PCAOB Data,* Working Paper (2018), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2838896. See also* Kinney and Shepardson 2011 Study, note 199 above.

[222] *See, e.g.,* 2011 SEC Staff Study, note 49 above, at 86 (citing evidence that while both issuers

Continued

this information may be limited. Further, researchers have been able to predict the identification by auditors of material weaknesses in ICFR beyond those identified by management, to some extent, by using otherwise available information about issuers beyond current restatements, such as their institutional ownership, aggregate losses, past restatements, and late filings.[223] The limited incremental information provided by ICFR auditor attestation reports about the risk of future restatements may result from disincentives, such as the increased risk of litigation and greater likelihood of management and auditor turnover that have been associated with earlier material weakness disclosures, for issuers and their auditors to disclose material weaknesses in the absence of restatements.[224] It may also result from issues with the quality of the audit of ICFR. In this regard, researchers have found that PCAOB scrutiny of these audits has been associated with a slightly higher rate of identification of material weaknesses in ICFR prior to a later restatement.[225]

A further reason why ICFR auditor attestation reports may provide only a weak warning about future restatements is that the audit of ICFR may contribute to the avoidance of misstatements, leading us to observe only the residual restatements where the misstatement risk was not foreseen or a misstatement was not detected for reasons unrelated to internal controls. Thus, the second possible benefit we consider is that the audit of ICFR may encourage management to maintain more effective controls and thereby deter accounting errors and fraud. The academic research discussed below documents substantial evidence that would be consistent with such effects, though, as is common in financial economics, it is difficult to determine whether the documented differences can be causally linked to the audit of ICFR.[226]

In particular, while issuers are subject to a number of requirements discussed above that are intended to help to ensure adequate internal controls and reliable financial statements,[227] studies have documented a significant association between audits of ICFR and the maintenance of better internal controls. The 2011 SEC Staff Study provides analysis and summarizes research indicating that issuers that were not required to obtain an ICFR auditor attestation disclosed ineffective ICFR at a greater rate than those that were subject to such requirements,[228] and newer studies demonstrate that this difference has remained consistent in recent years.[229] Further, a recent paper finds that the ICFR auditor attestation requirement, but not management ICFR reporting requirements alone, are associated with enhanced quarterly earnings accrual quality, and argues that this is an indication of the improved quality of internal controls.[230] We note, however, that this study finds that the improvements for issuers subject to the ICFR auditor attestation requirement are attenuated after the 2007 change in the ICFR auditing standard discussed in Section III.B.1 above.[231] The ICFR auditor attestation requirement has also been associated with a higher rate of remediation of material weaknesses after they are disclosed.[232]

To the extent that the ICFR auditor attestation requirement leads to more effective ICFR, this requirement may thereby lead to more reliable financial statements. Some studies have found that a failure to maintain effective ICFR has been associated with a higher rate of future restatements and lower earnings quality,[233] a higher rate of future fraud revelations,[234] more profitable insider trading,[235] and less accurate analyst forecasts.[236] Generally, ICFR auditor attestations also have been found to be directly associated with financial statements that are more reliable than in the absence of these attestations.[237] However, one study finds conflicting evidence using data from 2007 through 2013,[238] consistent

subject to SOX Section 404(b) as well as those only subject to SOX Section 404(a) often report restatements despite previously reporting that their ICFR was effective, such restatements were 46% higher among those filing only SOX Section 404(a) reports). *See also* PCAOB Investor Advisory Group, *Report from the Working Group on the Investor Survey* (2015), available at *https://pcaobus.org/News/Events/Documents/09092015_IAGMeeting/Investor_Survey_Slides.pdf* (reporting survey findings that 72% of institutional investors indicated that they relied on independent auditor attestations of ICFR either ''extensively'' or ''a good bit'').

[223] *See, e.g.,* Ge *et al.* 2017 Study, note 177 above.

[224] *See* Sarah Rice, David Weber, & Biyu Wu, *Does SOX 404 Have Teeth? Consequences of the Failure to Report Existing Internal Control Weaknesses,* 90(3) Acct. Rev. 1169 (2015). We note that auditors have a duty to follow auditing standards and, if they do not, face associated enforcement, inspection, reputation, and litigation risks that provide a countervailing incentive.

[225] *See, e.g.,* Defond and Lennox 2017 Study, note 126 above (finding that PCAOB inspections may increase auditors' issuance of adverse internal control opinions to clients with later restatements).

[226] *See* Coates and Srinivasan 2014 Study, note 181 above, and Leuz and Wysocki 2016 Study, note 193 above (both articles discussing the limited ability to make causal attribution based on research on the effects of the provisions of SOX, but also highlighting the specific studies that can more plausibly make causal claims). *See also Report to Congress: Access to Capital and Market Liquidity,* August 2017 SEC Staff study 24–27 (discussing similar limitations, in a different context, in the ability to make causal inferences about the effects of regulation because of data and experimental design issues), available at *https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-dera-2017.pdf.*

[227] *See* Section III.B.1 above.

[228] *See* 2011 SEC Staff Study, note 49 above, at 41 and 86–87. The rate of ineffective ICFR is based on the findings of management reports on ICFR pursuant to SOX Section 404(a). Because auditor attestations of ICFR are associated with an increased detection and disclosure of material weaknesses, as discussed above, the rate of ineffective ICFR reported by issuers not subject to the auditor attestation requirement may be understated, which would result in this difference also being understated.

[229] *See, e.g.,* Audit Analytics, *SOX 404 Disclosures: A Fourteen Year Review* (Sept. 2018) (''2018 Audit Analytics Study''), available at *www.auditanalytics.com/blog/sox-404-disclosures-a-fourteen-year-review/.*

[230] *See* Schroeder and Shepardson 2016 Study, note 124 above (using quarterly accruals quality, measured by the level of quarterly discretionary working capital accruals and the quarterly accrual estimation error, as a proxy for internal control quality based on the argument that internal control improvements should be exhibited in unaudited financial reports).

[231] *Id.*

[232] *See* Vishal Munsif & Meghna Singhvi, *Internal Control Reporting and Audit Fees of Non-Accelerated Filers,* 15(4) J. of Acct., Ethics & Pub. Pol'y 902 at 915 (2014) (finding that 49 out of 160, or 30%, of non-accelerated filers that disclosed a material weakness in 2008 reported no material weaknesses in 2009, in contrast to 64 out of 83, or 77%, of accelerated filers in a similar situation). *See also* Jacqueline Hammersley, Linda Myers, & Jian Zhou, *The Failure to Remediate Previously Disclosed Material Weaknesses in Internal Controls,* 31(2) Auditing: A J. of Prac. & Theory 73 (2012); and Karla Johnstone, Chan Li, & Kathleen Rupley, *Changes in Corporate Governance Associated with the Revelation of Internal Control Material Weaknesses and their Subsequent Remediation,* 28(1) *Contemp. Acct. Res.* 331 (2011) (both finding a similar rate of remediation for accelerated filers for an earlier sample period).

[233] *See* Coates and Srinivasan 2014 Study, note 181 above, at 649–650.

[234] *See* Dain Donelson, Matthew Ege, & John McInnis, *Internal Control Weaknesses and Financial Reporting Fraud,* 36(3) Auditing: A J. of Prac. and Theory 45 (2017) (finding that issuers with a material weakness in ICFR are 1.24 percentage points more likely to have a fraud revelation within the next three years compared to issuers without a material weakness, relative to a 1.60% unconditional probability of fraud).

[235] *See* Hollis Asbhaugh-Skaife, David Veenman, & Daniel Wangerin, *Internal Control over Financial Reporting and Managerial Rent Extraction: Evidence from the Profitability of Insider Trading,* 55(1) J. of Acct. and Econ. 91 (2013).

[236] *See, e.g.,* Sarah Clinton, Arianna Pinello, & Hollis Skaife, *The Implications of Ineffective Internal Control and SOX 404 Reporting for Financial Analysts,* 33(4) J. of Acct. and Pub. Pol'y 303 (2014).

[237] *See* 2011 SEC Staff Study, note 49 above, at 98–100. For more recent evidence, *see, e.g.,* Yuping Zhao, Jean Bedard, & Rani Hoitash, S*OX 404, Auditor Effort, and the Prevention of Financial Report Misstatements,* 151 (2017); and Lucy Chen, Jayanthi Krishnan, Heibatollah Sami, & Haiyan Zhou, *Auditor Attestation under SOX Section 404 and Earnings Informativeness,* 32(1) Auditing: A J. of Prac. & Theory 61 (2013).

[238] *See* Bhaskar *et al.* 2018 Study, note 124 above (finding that, among companies with less than $150 million in market capitalization, those providing

with concerns discussed in Section III.B.1 above that the quality of audits of ICFR dropped at least temporarily after 2007.

To evaluate the economic implications of any effects the ICFR auditor attestation requirement has on ICFR and financial statements, these effects can be tied to their possible effects on factors such as production or investment at the issuer or market level. For example, at the issuer level, more reliable disclosures are generally expected, based on economic theory, to lead investors to demand a lower expected return to hold an issuer's securities (*i.e.,* a lower cost of capital).[239] A lower cost of capital may enhance capital formation by encouraging issuers to issue additional securities in order to make new investments. Empirically, material weaknesses in ICFR,[240] restatements,[241] and low earnings quality [242] have all been associated with a higher cost of debt or equity [243] capital.

More effective ICFR and more reliable financial reporting may also lead to improved efficiency of production if managers themselves thereby have access to more reliable data that facilitates better operating and investing decisions.[244] For example, one study finds that the investment efficiency of issuers improves, in that both under-investment and over-investment are curtailed, after the disclosure and remediation of material weaknesses.[245] Another study finds that issuers that remediate material weaknesses in ICFR that are related to inventory tracking thereafter experience higher inventory turnover, together with improvements in sales and profitability.[246] That said, it is difficult to generalize the results beyond these samples to determine whether non-remediating issuers or issuers with different types of material weaknesses in ICFR could expect similar operational benefits from remediation.

The ICFR auditor attestation requirement may also result in benefits at the market level, though these are more difficult to measure than those at the issuer level.[247] The potential for market-level impact is largely driven by network effects (which are associated with the broad adoption of practices) and by other externalities (*i.e.,* spillover effects on issuers or parties beyond the issuer in question). For example, to the extent that the ICFR auditor attestation requirement leads to more reliable financial statements at a large number of issuers, it may lead to a more efficient allocation of capital across different investment opportunities at the market level.[248] The ICFR auditor attestation requirement also can enhance capital formation to the extent that it improves overall investor confidence, for which there is some suggestive evidence,[249] and thus encourages investment in public markets.[250]

Importantly, all of these benefits, at both the issuer and market level, likely vary across issuers of different types. For example, younger, loss-incurring issuers with lower market capitalization and lower institutional ownership, as well as those with more segments, tend to be more likely to newly disclose material weaknesses as they transition into the ICFR auditor attestation requirement.[251] However, the market

auditor attestations of ICFR, whether voluntarily or because they are accelerated filers, had a higher rate of material misstatements and lower earnings quality than others in this category in the period from 2007 through 2013).

[239] *See, e.g.,* Douglas Diamond & Robert Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46(4) J. of Fin. 1325 (1991) (''Diamond and Verrecchia 1991 Study''); David Easley & Maureen O'Hara, '*Information and the Cost of Capital,'* 59(4) J. of Fin. 1553 (2004); Richard Lambert, Christian Leuz, & Robert Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,*'' 45(2) J. OF ACCT. RES. 385 (2007); and Christopher Armstrong, John Core, Daniel Taylor, & Robert Verrecchia, *When Does Information Asymmetry Affect the Cost of Capital?* 49(1) J. OF ACCT. RES. 1 (2011). We note that these articles also detail limited theoretical circumstances under which more reliable disclosures could lead to a higher cost of capital, such as in the case where improved disclosure is sufficient to reduce incentives for market making.

[240] *See, e.g.,* Dragon Tang, Feng Tian, & Hong Yan, *Internal Control Quality and Credit Default Swap Spreads*, 29(3) Acct. Horizons 603 (2015); Lawrence Gordon & Amanda Wilford, *An Analysis of Multiple Consecutive Years of Material Weaknesses in Internal Control,* 87(6) Acct. Rev. 2027 (2012) (''Gordon and Wilford 2012 Study''); and H. Ashbaugh-Skaife, D. Collins, W. Kinney, & R. LaFond, *The Effect of SOX Internal Control Deficiencies on Firm Risk and Cost of Equity,* 47(1) J. of Acct. Res. 1 (2009) (''Ashbaugh-Skaife *et al.* 2009 Study''). We note that earlier work did not detect an association between SOX Section 404 material weaknesses and the equity cost of capital. *See, e.g.,* M. Ogneva, K. R. Subramanyam, & K. Rachunandan, *Internal Control Weakness and Cost of Equity: Evidence from SOX Section 404 Disclosures,* 82(5) Acct. Rev. 1255 (2007) (''Ogneva *et al.* 2007 Study''). *See also* 2011 SEC Staff Study, note 49 above, at 101–102.

[241] *See, e.g.,* Paul Hribar & Nicole Jenkins, *The Effect of Accounting Restatements on Earnings Revisions and the Estimated Cost of Capital,* 9 Rev. of Acct. Stud. 337 (2004) (''Hribar and Jenkins 2004 Study'').

[242] *See, e.g.,* Jennifer Francis, Ryan LaFond, Per M. Olsson, & Katherine Schipper, *Cost of Equity and Earnings Attributes,* 79(4) Acct. Rev. 967 (2004) (''Francis *et al.* 2004 Study'').

[243] We note that empirical studies of the cost of equity capital face particular challenges in accurately measuring the cost of equity capital, which can reduce their reliability, but that this is mitigated in studies that look at changes over time (Gordon and Wilford 2012 Study, note 240 above, Ashbaugh-Skaife *et al.* 2009 Study, note 240 above, and Hribar and Jenkins 2004 Study, note 241 above) rather than in the cross-section (Ogneva *et al.* 2007 Study, note 240 above, and Francis *et al.* 2004 Study, note 242 above). *See, e.g.,* Stephannie Larocque & Matthew R. Lyle, *Implied Cost of Equity Capital Estimates as Predictors of Accounting Returns and Stock Returns,* 2(1) J. of Fin. Rep. 69 (2017) (discussing concerns about measures of the cost of equity capital); and Charles M. C. Lee, Eric C. So, & Charles C. Y. Wang, *Evaluating Firm-Level Expected-Return Proxies,* Harvard Business School Working Paper 15–022 (2017) (finding that ''in the vast majority of research settings, biases in [equity cost of capital measures] are irrelevant'' and that the cost of equity capital measures used in the accounting literature ''are particularly useful in tracking time-series variations in expected returns'').

[244] *See, e.g.,* Ge *et al.* 2017 Study at 359 (arguing that internal control misreporting leads to lower operating performance due to the non-remediation of ineffective controls, and estimating the degree of such underperformance based on the improvement shown by issuers that are non-accelerated filers after disclosing and remediating material weaknesses, relative to other such issuers that are suspected of having unreported material weaknesses). We note that companies may choose to improve their controls when they are otherwise expecting to enter a period of improved performance, which could lead to a similar association without such improved performance being caused by the changes in internal controls.

[245] *See* Mei Cheng, Dan Dhaliwal, & Yuan Zheng, *Does Investment Efficiency Improve After the Disclosure of Material Weaknesses in Internal Control over Financial Reporting?,* 56(1) J. of Acct. and Econ. 1 (2013).

[246] *See* Mei Feng, Chan Li, Sarah McVay, & Hollis Skaife, *Does Ineffective Internal Control Over Financial Reporting Affect a Firm's Operations? Evidence From Firms' Inventory Management,*'' 90(2) Acct. Rev., 529 (2015).

[247] *See, e.g.,* Leuz and Wysocki 2016 Study, note 193 above (stating that researchers ''generally lack evidence on market-wide effects and externalities from regulation, yet such evidence is central to the economic justification of regulation'' and acknowledging that ''the identification of such market-wide effects and externalities is even more difficult than the identification of direct economic consequences on individual firms'').

[248] There is also some evidence that more reliable financial disclosures also facilitate a more effective market for corporate control, which can increase overall market discipline and thus enhance the efficiency of production by incentivizing more effective management. *See* Amir Amel-Zadeh & Yuan Zhang, *The Economic Consequences of Financial Restatements: Evidence from the Market for Corporate Control,* 90(1) Acct. Rev. 1 (2015). *See also* Vidhi Chhaochharia, Clemens Otto, & Vikrant Vig, *The Unintended Effects of the Sarbanes–Oxley Act,* 167(1) J. of Institutional and Theoretical Econ. 149 (2011).

[249] *See, e.g.,* 2013 GAO Study, note 115 above (finding that 52% of the companies surveyed reported greater confidence in the financial reports of other companies due to the ICFR auditor attestation requirement; in contrast, 30% of the respondents reported that they believed this requirement raised investor confidence in their own company).

[250] For a further discussion of potential externalities, *see* Coates and Srinivasan 2014 Study, note 181 above, at 657–659.

[251] *See* Ge *et al.* 2017 Study (regarding the term ''younger,'' this study defines company age as the number of years a company has been covered in the Compustat database). *See also* 2011 SEC Staff

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appears to account for the association of material weaknesses with these and other observable issuer characteristics. Thus, issuers with characteristics associated with a higher rate of material weaknesses but that receive an auditor attestation report that does not find such weaknesses are found to have the greatest cost of capital benefit from such a report.[252] Small, loss-incurring issuers are also disproportionately represented amongst issuers that have allegedly engaged in financial disclosure frauds, indicating that any benefits in terms of investor protection and investor confidence may be particularly important for this population of issuers.[253] On the other hand, marginal changes in the reliability of the financial statements of issuers whose valuation is driven primarily by their future prospects could have limited issuer- and market-level effects to the extent that the current financial statements of these issuers are less critical to assessing their valuation.[254]

b. Estimated Effects on ICFR and the Reliability of Financial Statements

The academic literature discussed in Section III.C.4.a above suggests that the scrutiny associated with the ICFR auditor attestation may lead issuers that are required to obtain this attestation to maintain more effective ICFR and to remediate material weaknesses in ICFR more quickly, leading to more reliable financial statements. Further, as discussed above, studies have highlighted that smaller reporting issuers are disproportionately represented in populations of issuers with ineffective ICFR and financial statements that require material restatement. In addition, smaller issuers are less likely to have significant external scrutiny in the form of analyst and media coverage and monitoring by institutional owners,[255] which could otherwise provide another source of discipline to maintain the reliability of financial statements.

However, one study cited above finds that the ICFR auditor attestation requirement was associated with less reliable financial statements for lower market capitalization issuers from 2007 through 2013,[256] and the existing studies in general may not be directly applicable to current circumstances given the 2010 change in risk assessment auditing standards, the 2007 change in the ICFR auditing standard and other recent changes discussed in Section III.B.1 above. Importantly, the existing literature also does not directly examine low revenue issuers.

This section therefore provides an analysis of low-revenue issuers using recent data to complement the existing studies and better inform our consideration of the possible costs of the proposed amendments. However, some uncertainty will remain due to the challenges discussed above in measurement and in ascribing causality in any such analysis, the limited sample sizes that result when restricting the analysis to recent years, and the general difficulty of predicting how the parties involved would react to the proposed changes. As discussed in Section III.C.2 above, our analysis includes an examination of two comparison populations of issuers that are not subject to the ICFR auditor attestation requirement but that otherwise have similar responsibilities with respect to ICFR (*i.e.,* non-accelerated filers, other than EGCs, and EGCs), with consideration given to the ways in which these issuers differ from the affected issuers.

We first consider possible effects related to the effectiveness of the affected issuers' ICFR. Because the issuers in our comparison groups are not required to obtain an ICFR auditor attestation, we focus on the findings of SOX Section 404(a) management reports on ICFR, with the caveat that management may not report as many material weaknesses in the absence of an audit of ICFR. The percentage of issuers reporting ineffective ICFR in their management report by issuer type and revenue category for each of the last four years is presented in Table 13.

TABLE 13—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR IN MANAGEMENT REPORT[257]

Ineffective ICFR year	Accelerated (ex. EGCs) (percent)	Non-Accelerated (ex. EGCs) (percent)	EGC (percent)
Revenue <$100M:			
2014	6.0	27.0	43.7
2015	6.7	26.5	23.8
2016	9.0	25.9	33.5
2017	8.4	28.1	36.1
Average/year	*7.5*	*26.9*	*34.3*
Revenue ≥$100M:			
2014	8.6	11.3	5.4
2015	9.5	10.1	12.1
2016	8.9	9.0	9.2
2017	10.1	7.6	10.3
Average/year	*9.2*	*9.5*	*9.2*

Study, note 49 above, at 96 (summarizing previous research finding that internal control deficiencies are associated with smaller, complex, riskier, and more financially-distressed issuers).

[252] *See* Ashbaugh-Skaife *et al.* 2009 Study, note 240 above.

[253] *See, e.g.,* Committee of Sponsoring Organizations of the Treadway Commission, *Fraudulent Financial Reporting 1998–2007: An Analysis of U.S. Public Companies* (2010) (''COSO 2010 Fraud Study''), available at *http://www.coso.org/documents/COSO-Fraud-Study-2010–001.pdf* (finding that companies allegedly engaging in financial disclosure fraud in the period from 1998 through 2007 had median assets and revenue under $100 million and were often loss-incurring or close to breakeven) and *Characteristics of Financial Restatements and Frauds,* CPA J. (Nov. 2017), available at *www.cpajournal.com/2017/11/20/characteristics-financial-restatements-frauds/* (for more recent evidence).

[254] *See, e.g.,* Patricia Dechow & Catherine Schrand, *Earnings Quality,* Research Foundation of CFA Institute 12 (2004) (''Dechow and Schrand 2004 Monograph'').

[255] *See, e.g.,* Joel Peress & Lily Fang, *Media Coverage and the Cross-Section of Stock Returns,* 64(5) J. of Fin. 2023 at 2030 (2009) (finding that ''firm size has an overwhelming effect on media coverage: large firms are much more likely to be covered''); Armando Gomes, Gary Gorton, & Leonardo Madureira, *SEC Regulation Fair Disclosure, Information, and the Cost of Capital,* 13 J. of Corp. Fin. 300 at 307 (2007) (stating that ''there is overwhelming evidence that size can explain analyst following''); and Eliezer Fich, Jarrad Harford, & Anh Tran, *Motivated Monitors: The Importance of Institutional Investors' Portfolio Weights,* 118(1) J. of Fin. Econ. 21 (2015) (finding that institutional monitoring is greatest when a company represents a significant allocation of funds in the institution's portfolio, which is strongly associated with company size).

[256] *See* Bhaskar *et al.* 2018 Study, note 124 above, as discussed in note 238 above.

TABLE 13—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR IN MANAGEMENT REPORT [257]—Continued

Ineffective ICFR year	Accelerated (ex. EGCs) (percent)	Non-Accelerated (ex. EGCs) (percent)	EGC (percent)
Difference in average/year	*– 1.7*	*17.4*	*25.1*

Among accelerated filers, the rates of ineffective ICFR are relatively similar for issuers with revenue below $100 million, which would be newly exempted from the ICFR auditor attestation requirement, and those above $100 million. Because all of these issuers are currently subject to the ICFR auditor attestation requirement, we next examine non-accelerated filers (other than EGCs) and EGCs for insight into whether lower revenue issuers may behave differently than others in the absence of such a requirement. When considering these categories of issuers, there is a clear and consistent pattern: those with low revenues report ineffective ICFR at much higher rates (roughly 15 to 25% higher) than others. Those with higher revenues report ineffective ICFR at rates that are more similar to those for accelerated filers.

Because we must rely on disclosed rates of ineffective ICFR, it is difficult to separate the extent to which these rates are affected by the detection and disclosure of material weaknesses in ICFR as opposed to actual underlying material weaknesses in ICFR. As discussed in Section III.C.4.a above, studies have found that audits of ICFR often result in the identification and disclosure of material weaknesses that were not previously identified or whose severity was misclassified in management's initial assessment. Thus, extending the exemption from the ICFR auditor attestation requirement to the affected issuers may decrease the likelihood that, when these issuers have underlying material weaknesses in ICFR, these material weaknesses are detected and disclosed.

It is possible that low-revenue issuers may be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation, perhaps because they have less complex financial systems and controls.[258] Consistent with this hypothesis, Table 13 demonstrates that the low-revenue issuers that are not subject to the ICFR auditor attestation requirement report relatively high rates of ineffective ICFR. However, it is unclear whether these issuers, if subject to an ICFR auditor attestation requirement, may have been even more likely to uncover material weaknesses. We consider how those affected issuers whose proclivity to detect and disclose underlying material weaknesses in the absence of an ICFR auditor attestation differs from other affected issuers may be differentially affected by the proposed amendments in Section III.C.4.c. below.

Regardless of the extent to which the detection of material weaknesses may be improved by an ICFR auditor attestation, the pattern across the comparison populations in Table 13 suggests that, in the absence of an ICFR auditor attestation requirement, low-revenue issuers are less likely than higher revenue issuers to have effective ICFR in place or to remediate their material weaknesses in ICFR. This may not be surprising, as certain material weaknesses in ICFR may be corrected by, for example, hiring additional staff, which managers of an issuer that is not currently producing much revenue may prefer to defer to a later time. Indeed, about 80 to 85% of the low-revenue issuers reporting ineffective ICFR in the comparison populations in 2017 reported at least one staffing-related material weakness, though these were generally accompanied by other types of material weaknesses.[259]

As discussed in Section III.C.2, the issuers in the comparison groups may have higher rates of ineffective ICFR than would a group of issuers that is more comparable to the affected issuers in terms of size and maturity. In addition, besides having low revenues, the issuers in the comparison groups have lower-valued assets and fewer employees than the corresponding accelerated filers, and may therefore be less inclined to expend resources on remediating their ICFR. However, because the rates of ineffective ICFR are similar for the higher revenue issuers of all types in Table 13, but low-revenue issuers that are not subject to the ICFR auditor attestation requirement report ineffective ICFR at much higher rates than the corresponding higher revenue issuers, it is likely that these differences are due at least in part to the nature of low-revenue issuers rather than being driven solely by the differences between the affected issuers and our comparison populations.

We therefore expect that extending the exemption from the ICFR auditor attestation requirement, as proposed, may result over time in a lower number of the affected issuers establishing or maintaining effective ICFR. While low-revenue issuers in the comparison populations report ineffective ICFR at rates that average 15 to 25% percentage points higher than low-revenue accelerated filers, given the differences in the affected issuers versus the comparison populations, we look to the low end of this range and preliminarily estimate that, over time, an additional 15% of the affected issuers may fail to maintain effective ICFR. This estimate is consistent with the estimated effect on ICFR based on a study of issuers transitioning into the ICFR auditor attestation requirement.[260] We do not

[257] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. ICFR effectiveness is based on the last amended management report for the fiscal year. Percentages are computed out of all issuers of a given filer type and revenue category with revenue data and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. The accelerated and non-accelerated categories exclude EGCs. *See* note 116 above for details on the identification of filer type.

[258] *See* 2017 SICPG Survey Report, note 210 above, at 6 (finding that 33% of survey respondents with revenues of $75 million or less reported that they manage no more than 100 total controls, as compared to 13% of those with revenues of $76 to $700 million and zero percent of those with revenues greater than $700 million).

[259] These estimates are based on staff analysis of Ives Group Audit Analytics data. Material weaknesses are considered to be staffing-related if they are categorized in the database as either ''Segregations of duties/design of controls (personnel)'' or ''Accounting personnel resources, competency/training.'' In comparison, roughly 70% of the accelerated filers reporting ineffective ICFR in Table 13, whether in the high- or low-revenue category, reported at least one staffing-related material weakness. *See also* 2018 Audit Analytics Study, note 229 above, at 6 (stating, ''The fact that staffing shortfalls are a pervasive difficulty for many smaller companies explains why the percentage of smaller companies that must disclose ineffective ICFRs maintains a value of 30% or more since 2007,'' where those companies that provide only a management assessment of ICFR, and not an ICFR auditor attestation, are considered to be ''smaller'' companies).

[260] *See* Ge *et al.* 2017 Study, note 177 above, at 372 (finding that 62.5% of companies that reported material weaknesses as non-accelerated filers remediate these upon entering accelerated filer status). The 62.5% remediation rate estimated in this study would imply that an additional 15 percentage points of issuers with ineffective ICFR would be expected without the ICFR auditor

Continued

expect the full estimated effect to be experienced immediately upon effectiveness of the proposed amendments. Instead, as discussed in detail at the end of this section, we expect a movement towards this higher rate of ineffective ICFR over time as some of the affected issuers make incremental changes in their investment in ICFR and as additional issuers enter the category of affected issuers.

We next consider to the extent to which this possible effect might translate into less reliable financial statements. By definition, material weaknesses represent a reasonable possibility that a material misstatement of the issuer's financial statements will not be prevented or detected on a timely basis, and as discussed above, existing studies have demonstrated that ineffective ICFR is associated with less reliable financial statements. Thus, our estimated increase in the rate of ineffective ICFR likely would translate into a decrease in the reliability of the financial statements of the affected issuers. However, low-revenue issuers could be less susceptible, on average, to at least certain kinds of misstatements. In particular, ten to 20% of restatements and about 60% of the cases of financial disclosure fraud in recent times have been associated with improper revenue recognition,[261] which is less of a risk, for example, for issuers that currently have no revenues.

We explore this possibility empirically in Table 14, which presents the percentage of issuers in different categories that eventually restated some of the financial statements that they reported for a given year. We consider financial statements associated with years 2014 through 2016, but we note that the restatement rates that we observe for 2016 are lower than for previous years (and would be even lower for 2017) because of the lag between the initial reporting of financial statements and the detection and filing of restatements for those disclosures.

TABLE 14—PERCENTAGE OF ISSUERS ISSUING RESTATEMENTS BY YEAR OF RESTATED FINANCIALS, BY REVENUE CATEGORY [262]

Restated year	Accelerated (ex. EGCs) (percent)	Non-Accelerated (ex. EGCs) (percent)	EGC (percent)
Revenue <$100M:			
2014	6.2	10.3	14.7
2015	6.9	8.4	10.9
2016	5.4	5.7	7.9
Average/year	*6.2*	*8.2*	*11.2*
Revenue ≥$100M			
2014	14.1	15.9	29.7
2015	13.1	10.6	23.1
2016	8.2	6.1	8.6
Average/year	*11.8*	*10.9*	*20.5*
Difference in average/year	*−5.6*	*−2.7*	*−9.3*

Table 14 demonstrates that issuers with revenues of less than $100 million have, on average, restatement rates that are three to nine percentage points lower than those for higher revenue issuers.[263] This is the case for all three categories of issuers in the table, including the non-accelerated filers (other than EGCs) and EGCs, neither of which is subject to the ICFR auditor attestation requirement. This result is consistent with low-revenue issuers being less likely to make restatements, even (per Table 13) when they experience high rates of ineffective ICFR, perhaps because they are less susceptible to certain kinds of misstatements (such as those related to revenue recognition).

As discussed above, observed restatements reflect misstatements that were detected and may only be a subset of actual misstatements. However, because we see the same pattern in each column of Table 14 when moving from low revenue to higher revenue, including for accelerated filers other than EGCs (which have relatively low rates of ineffective ICFR), we preliminarily believe that the lower restatement rates for low-revenue issuers are not driven by a difference in the ability to detect misstatements among these categories of issuers.

Despite the lower restatement rates of low-revenue issuers, we expect that the proposed amendments will have some eventual adverse impact on the restatement rates of the affected issuers. Table 14 demonstrates that, among low-revenue issuers, the accelerated filers other than EGCs have a two percent (relative to non-accelerated filers other than EGCs) or five percent (relative to EGCs) lower restatement rate than the issuers in the comparison populations, which are not subject to the ICFR auditor attestation requirement. However, as discussed in Section III.C.2 above, the issuers in the comparison groups may have higher rates of restatement than would a group of issuers that is more comparable to the affected issuers in terms of size and maturity. We therefore look to the low end of this range and preliminarily estimate that, over time, the rate of restatements among the affected issuers may increase by two percentage points. However, given their lower current rates of restatement, even after such an increase the affected issuers may, on average, restate their financial

attestation when 15 times (1/0.625–1) or nine percent of issuers had ineffective ICFR with the ICFR auditor attestation, which is similar to the rate of ineffective ICFR we find for accelerated filers.

[261] *See* Audit Analytics, *2017 Financial Restatements: A Seventeen Year Comparison,* (May 2018), available at *https://www.auditanalytics.com/blog/2017-financial-restatements-review/,* and COSO 2010 Fraud Study, note 253 above.

[262] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. Percentages are computed out of all issuers of a given filer type and revenue category with revenue data and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. The accelerated and non-accelerated categories exclude EGCs. *See* note 116 above for details on the identification of filer type.

[263] This result is consistent with the BIO Study, which finds that biotechnology EGCs have a two to three percentage point lower restatement rate than other non-accelerated or accelerated filers and attribute this to their ''absence of product revenue.'' *See* BIO Study, note 211 above (finding a 6.20% restatement rate for biotechnology EGCs compared to rates of 7.98% and 9.25% for other non-accelerated and accelerated filers respectively).

statements at a rate that is lower than that of issuers that would remain accelerated filers, and that does not exceed that of non-accelerated filers and EGCs with comparable revenues.[264]

While we anticipate that the frequency of ineffective ICFR and, to a lesser extent, restatements may increase among the affected issuers as a result of the proposed amendments, the economic effects of these changes may be mitigated by another factor that may apply to many of these issuers. In particular, the usefulness of more reliable financial statements is linked to the degree to which they factor into the decisions of investors,[265] for example, with respect to these investors' valuations of issuers.[266] The financial statements of many low-revenue issuers may have relatively lower relevance for market performance if, for example, relative to higher revenue issuers, their valuation hinges more on their future prospects than on their current financial performance. We explore this possibility empirically in Table 15, which uses the methodology applied in previous studies to calculate, for issuers above and below the $100 million revenue threshold, the extent to which the variation in market performance is related to the variation in financial measures.

TABLE 15—PERCENTAGE OF VARIATION IN MARKET PERFORMANCE EXPLAINED BY VARIATION IN FINANCIAL PERFORMANCE FOR 1998 THROUGH 2017, BY REVENUE CATEGORY[267]

Market variable	Explanatory variables	Revenue <$100MM (percent)	Revenue ≥$100M (percent)
Market value of equity	Book value of assets, book value of liabilities	29.5	62.3
Market value of equity	Book value of equity, earnings	30.5	70.0
Stock return	Earnings, change in earnings	4.6	7.5

For issuers at or above $100 million in revenue, we find that the financial variables used as explanatory variables in Table 15 explain about 60 to 70% of the variation in equity market capitalization and 7.5% of the variation in stock returns. These results are consistent with the findings of previous studies for all issuers.[268] In contrast, for issuers with revenues of less than $100 million, we find that these financial variables explain about 30% of the variation in equity market capitalization and just over 4.5% of the variation in stock returns. Importantly, these results show that financial statements are not irrelevant for low-revenue issuers. Thus, the anticipated reduction in the reliability of financial statement for the affected issuers is expected to have some negative implications. However, the lower empirical relevance of financial statements on average for these issuers may partially mitigate the potential adverse effects of the proposed amendments.

Finally, we anticipate that the potential adverse effects of the proposed amendments will develop gradually and are likely to be relatively limited in the short term. The preceding discussion is based on the comparison of steady-state differences across issuers in different categories, and represents an analysis of the eventual effects of the proposed amendments. Because the proposed amendments would allow some current accelerated filers to transition to non-accelerated filer status, some issuers that have already been subject to an audit of ICFR for one or more years may no longer be required to obtain an ICFR auditor attestation. While other issuers will enter into the affected issuers category without having previously obtained an ICFR auditor attestation, and such issuers are likely to represent a larger fraction of the affected issuers over time, initially issuers with experience with ICFR auditor attestations are expected to represent a substantial fraction of the affected issuers. Nevertheless, we recognize that a delay in realizing some of the associated costs from the proposed amendments would not necessarily mitigate their ultimate effects.

Newly exempt issuers may have implemented control improvements that would persist regardless of a transition. For example, they may have made investments in systems, procedures, or training that are unlikely to be reversed. It is difficult to predict the degree of inertia in ICFR and financial reporting in order to gauge how quickly, if at all, issuers that cease audits of ICFR may evolve such that their ICFR and the reliability of their financial statements is more characteristic of exempt issuers.[269] The gradual nature of such an evolution, and the associated halo effect of the last disclosed ICFR auditor attestation, may limit the short-term costs of the proposed amendments. In addition, issuers that believe control improvements are valuable for reporting and certifying results would be free to spend the resources saved on the attestations on such improvements.

Affected issuers with experience with audits of ICFR may also be more likely to continue to obtain an ICFR auditor attestation on a voluntary basis than other exempt issuers are to begin voluntary audits of ICFR. This may be due to such issuers having already incurred certain start-up costs or facing demand from their current investors to continue to provide ICFR auditor

[264] We note that an estimate on the high end of the range also would not lead to an estimated eventual restatement rate for the affected issuers that would exceed the estimated average restatement rate of those that would remain accelerated filers.

[265] *See, e.g.,* Dechow and Schrand 2004 Monograph, note 254 above.

[266] *See* Jennifer Francis & Katherine Schipper, *Have Financial Statements Lost Their Relevance?,* 37(2) J. of Acct. Res. 319 (1999) (''Francis and Schipper 1999 Study'').

[267] The reported statistics are adjusted R-squared statistics based on regression analysis by staff using data from the Standard & Poor's Compustat and Center for Research in Security Prices databases. Market value and financial variables are measured as of the end of the fiscal year. Earnings is income before extraordinary items. Stock return is the 15-month stock return ending three months after fiscal year-end, to account for reporting lags. For stock return regression, earnings are scaled by the lagged market value of equity, and outliers in one percent tails of variable distributions are dropped to reduce noise. *See id.* for additional details.

[268] *See, e.g.,* Francis and Schipper 1999 Study. While that study ends in 1994, before our 20-year horizon, the results are similar. For example, for the most recent ten years in that study, the book values of assets and liabilities explain 54 to 70% of the variation in equity market valuation, the book value of equity and earnings explain 63 to 78% of the variation in equity market valuation, and earnings and the change in earnings explain six to 20% of the variation in stock returns.

[269] We note that there is a relatively small sample of accelerated filers transitioning to non-accelerated filer status because of changes in their public float, as compared to transitions in the other direction, and that such transitions likely represent special circumstances such as underperformance. Therefore, such transitions are not particularly helpful for predicting the outcomes of accelerated filers transitioning to non-accelerated filer status because of the proposed amendments.

attestations. Some issuers in the groups that we use for comparison, which are not subject to an ICFR auditor attestation requirement, voluntarily obtain an ICFR auditor attestation. Thus, the comparisons made above at least partially account for the fact that some issuers may choose to obtain an ICFR auditor attestation even in the absence of a requirement. However, to the extent the rate of voluntary ICFR auditor attestations would be higher amongst the issuers that would be newly exempt from the ICFR auditor attestation requirement than other exempt issuers, the anticipated costs of the proposed amendments in the near term may be further reduced.

c. Potential Economic Costs of Effects on ICFR and Reliability of Financial Statements

Per the discussion in Section III.C.4.a above, any impact of the proposed amendments on the effectiveness of ICFR and the reliability of financial statements may have issuer-level implications as well as market-level implications. At the issuer level, the potential increase, on average, in the rate of ineffective ICFR and restatements may lead investors to charge a somewhat higher average cost of capital for the affected issuers. An issuer's cost of capital, or the expected return that investors demand to hold its securities, determines the price at which it can raise funds. Thus, any such increase may be associated with a reduction in capital formation to the extent that it decreases the rate at which the affected issuers raise new capital towards new investments. Further, the affected issuers may also experience reduced operational efficiency because of the reduced reliability of financial information available to management for the purpose of making operating decisions. These potential effects are supported by a number of studies discussed above.[270]

The potential issuer-level effects on cost of capital and operating performance are difficult to confirm and to quantify for the affected issuers because the existing studies may not be generalizable to the affected issuers and to the current nature of ICFR auditor attestations (after the 2007 change in the ICFR auditing standard, the 2010 change in risk assessment auditing standards, and recent PCAOB inspections focused on these aspects of audits). Further, some of these studies provide mixed evidence, as discussed in Section III.C.4.a above. Moreover, the methods used in previous studies are difficult to apply to a comparable sample of low-revenue issuers in more recent years because, for example, there would only be a small sample of such issuers that recently switched filing status and because methods of measuring the implied cost of capital are particularly problematic for such issuers.[271]

The available evidence supports the qualitative, directional effects noted above. However, the previous section demonstrated that the potential increase in material weaknesses in ICFR that we estimate could occur may translate into a more limited effect on the reliability of disclosures, as measured by the rate of restatements, for the affected issuers. Also, based on our analysis, the financial metrics of these issuers have lower explanatory power for investors' determination of their value than in the case of other issuers. These two factors may mitigate the potential adverse effects on the affected issuers' cost of capital and operating performance.

Importantly, some of the costs of extending the exemption from the ICFR auditor attestation requirement to additional issuers may be further mitigated by the fact that some issuers, even if exempted, may voluntarily choose to bear the costs of obtaining such an attestation.[272] Affected issuers that expect a lower cost of capital with an ICFR auditor attestation, such as those with effective ICFR,[273] and particularly those that will be raising new debt or equity capital,[274] are more likely to voluntarily obtain an ICFR auditor attestation. We note that low-revenue issuers have less access to internally-generated capital, as discussed above, so they may be more reliant on external financing for capital. However, it is probably not the case that voluntary compliance with the ICFR auditor attestation requirement would be undertaken in every case in which the total benefits of doing so would exceed the total costs.[275] Further, we note that the benefits of voluntary compliance may be partially constrained by a lack of prominent disclosure of such compliance, in that investors may not be able to readily discern which issuers voluntarily comply,[276] although we expect that voluntary compliers may be likely to make investors aware of their compliance through other means.

Issuers and other market participants may also adapt to the proposed changes in other ways, which may serve to enhance or mitigate the anticipated costs. However, these actions, and therefore their net effects, are difficult to predict. For example, it has been posited that issuers reacted to the requirements of SOX by reducing accruals-based earnings management and, in its stead, making suboptimal business decisions for the purpose of real earnings management.[277] It is therefore possible that newly exempt issuers could, to some extent, reduce real earnings management in favor of accruals-based management. Another possibility is that scrutiny from analysts may provide an alternative source of discipline for some of the affected issuers, although there is evidence that analysts may stop covering issuers whose financial statements are deemed to have become less reliable.[278]

While the preceding analysis considers the average effects across the affected issuers on the effectiveness of ICFR and the reliability of financial statements, the potential issuer-level costs of the proposed extension of the exemption from the ICFR auditor attestation requirement likely vary

[270] *See* Section III.

[271] *See* note 243 above.

[272] Studies have associated voluntary compliance with the ICFR auditor attestation requirement with decreased cost of capital and value enhancements. *See, e.g.,* Cory Cassell, Linda Myers, & Jian Zhou, *The Effect of Voluntary Internal Control Audits on the Cost of Capital,* Working Paper (2013) (Cassell *et al.* 2013 Study), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1734300;* Todd Kravet, Sarah McVay, & David Weber, *Costs and Benefits of Internal Control Audits: Evidence from M&A Transactions,* Rev. of Acct. Stud. (forthcoming 2018), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958318;* and Carnes *et al.* 2019 Study, note 194 above. We note that the latter two studies are not able to differentiate between the effects of the ICFR auditor attestation and of management's assessment of ICFR under SOX Section 404(a).

[273] *See* Brown *et al.* 2016 Study, note 193 above.

[274] *See* Cassell *et al.* 2013 Study.

[275] There is substantial literature describing the fact that in certain circumstances the incentives of managers are not perfectly aligned with those of shareholders. *See, e.g.,* Michael Jensen & William Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3(4) J. of Fin. Econ. 305 (1976). Also, as discussed in Section III.C.4.a above, the ICFR auditor attestation requirement can have important market-level benefits through network and spillover effects that issuers are unlikely to internalize. That is, issuers are likely to balance the issuer-level benefits against the issuer-level costs of voluntary compliance without considering these externalities.

[276] *See* 2013 GAO Study, note 115 above.

[277] *See* Daniel Cohen, Aiyesha Dey, & Thomas Lys, *Real and Accrual-Based Earnings Management in the Pre- and Post-Sarbanes Oxley Periods,* 83(3) Acct. Rev. 757 (2008) (finding that an increase in real earnings management partially offset the decrease in accruals-based earnings management that followed SOX). *See also* Coates and Srinivasan 2014 Study, note 181 above, at 646–647.

[278] *See* Sarah Clinton, Arianna Pinello, & Hollis Ashbaugh-Skaife, *The Implications of Ineffective Internal Control and SOX 404 Reporting for Financial Analysts,*'' 33(4) J. of Acct. and Pub. Pol'y 303 (2013) (finding that the disclosure of internal control weaknesses are followed by a decline in analyst coverage).

across different types of affected issuers. In particular, for issuers without (and that continue not to have) underlying material weaknesses in their ICFR, a lack of an auditor attestation may decrease confidence in the effectiveness of their ICFR and therefore increase their cost of capital, particularly for those with characteristics that might otherwise lead the market to believe that they likely have unreported material weaknesses.[279] Issuers without underlying material weaknesses in their ICFR are less likely to experience effects on the reliability of their financial statements or operating performance.

Among issuers with (or that develop) material weaknesses in ICFR, some may fully detect and disclose these in their SOX Section 404(a) management reports even in the absence of an ICFR auditor attestation requirement. For such issuers, evidence suggests that the removal of the ICFR auditor attestation requirement may reduce the likelihood that they remediate, or the speed with which they remediate, such material weaknesses.[280] For these issuers, an exemption from the ICFR auditor attestation requirement may, over time, result in less reliable financial statements, a higher cost of capital, and some operational underperformance.

Other issuers with (or that develop) material weaknesses in ICFR may not detect or disclose all of these material weaknesses in the absence of an ICFR auditor attestation requirement. Those that would, however, report ineffective ICFR when subject to the ICFR auditor attestation requirement [281] may have a temporarily reduced cost of capital if exempted from this requirement, particularly if they have characteristics that do not otherwise lead the market to suspect that their ICFR may be ineffective (such as those without past restatements).[282] Any such reduced cost of capital for these under-reporters may be temporary, as such issuers may be less likely to remediate underlying material weaknesses in their ICFR and could thus eventually face a higher cost of capital due to less reliable financial statements and could experience negative effects on their operating performance.[283]

To the extent that the reliability of financial statements is somewhat reduced on average at the issuer level for the affected issuers, the efficient allocation of capital at the market level may be negatively affected given a diminished ability to reliably evaluate different investment alternatives.[284] Further, such effects could negatively impact capital formation through a reduction in investor confidence. Section III.C.4.a provides additional discussion of these market-level factors. We anticipate that any such market-level effects may be limited by the small percentage of the total value of traded securities that is represented by the affected issuers and the size of the expected effect on the reliability of these issuers' disclosures.

5. Potential Benefits and Costs Related to Other Aspects of the Proposed Amendments

In this section we consider the potential effects of the proposed amendments with regard to other implications of accelerated filer status, specifically with respect to the timing of filing deadlines, certain required disclosures, and the determination of filer status. We also consider below some incremental effects of the proposed amendments to the thresholds for exiting accelerated and large accelerated filer status.

a. Filing Deadlines

As discussed in Section III.B.1 above, non-accelerated filers are permitted an additional 15 days and five days, respectively, beyond the deadlines that apply to accelerated filers, to file their annual and quarterly reports. Extending these later deadlines to the affected issuers may provide these issuers with additional flexibility in preparing their disclosures, while modestly decreasing the timeliness of the data for investors.

Table 8 in Section III.B.3 demonstrates that while the filing deadlines are not a binding constraint for most accelerated filers, with 64% filing their annual reports over five days early in recent years, some accelerated filers would benefit from an extended deadline. For example, filing Form NT automatically provides a grace period of an additional 15 days to file an annual report, and over the past four years, about five percent of accelerated filers filed their annual reports within this grace period rather than by the original deadline. A further four percent of accelerated filers filed their annual reports after these additional 15 days had passed.

Even affected issuers that would otherwise have filed by the accelerated filer deadline may avail themselves of the additional time provided under the proposed amendments to balance other obligations or to prepare higher quality disclosures. The 2003 acceleration of filing deadlines for accelerated filers from 90 to 75 days was associated, at least initially, with a higher rate of restatements for the affected issuers.[285] This finding suggests that a later deadline may allow some issuers to provide more reliable financial disclosures. While these issuers could alternatively file Form NT to receive an automatic extension, studies have found that investors interpret such filings as a negative signal, resulting in a negative stock price reaction.[286] Issuers may thus prefer to meet the original deadline if possible.

On the other hand, allowing the affected issuers to file according to the

[279] *See, e.g.,* Ashbaugh-Skaife *et al.* 2009 Study, note 240 above (finding that an unqualified SOX 404 opinion is associated with a 116 basis point decrease in the cost of capital for companies with the characteristics most associated with having ICFR deficiencies, and no significant change for those with characteristics least associated with such deficiencies). *See* also Ge *et al.* 2017 Study, note 177 above, at 372 (finding that 90% of issuers with management reports disclosing effective ICFR that then transition to accelerated filer status receive an auditor attestation that also finds no material weaknesses in ICFR).

[280] *See* Ge *et al.* 2017 Study, note 177 above, at 372 (finding that 62.5% of companies that reported material weaknesses as non-accelerated filers remediate these upon entering accelerated filer status). We note that this rate is significantly higher than the remediation rate for non-accelerated filers in general. We estimate that 10%, 11%, and six percent respectively of the non-accelerated filers reporting material weaknesses in ICFR in 2014, 2015, and 2016 that remain non-accelerated filers in the following year report no such weaknesses in the following year. *See* note 143 above for detail on the data sources and methodologies underlying this estimate.

[281] *Id.* (finding that about ten percent of issuers reporting effective ICFR in their management reports as non-accelerated filers report ineffective ICFR upon entering accelerated filer status).

[282] *See, e.g.,* Ashbaugh-Skaife *et al.* 2009 Study, note 240 above (finding that companies that newly disclose material weaknesses in their ICFR have an increase in their cost of capital, but that this increase is lower for companies with the characteristics most associated with having such material weaknesses, at about 50 basis points, and higher for companies without such characteristics, at about 125 basis points).

[283] *See* Ge *et al.* 2017 Study, note 177 above. *See also* the evidence summarized in Section III.C.4.a.

[284] The efficient allocation of capital may be further reduced to the extent that the potential cost of capital effects discussed above operate through a reduction in the liquidity of the market for these issuers' shares, which increases the costs to investors looking to adjust their investments or redeploy their capital. *See* Diamond and Verrecchia 1991 Study, note 239 above.

[285] *See, e.g.,* Colleen Boland, Scott Bronson, & Chris Hogan, *Accelerated Filing Deadlines, Internal Controls, and Financial Statement Quality: The Case of Originating Misstatements,* 29(3) Acct. Horizons 551 (2015) (''Boland *et al.* 2015 Study''); and Lisa Bryant-Kutcher, Emma Yan Peng, & David Weber, *Regulating the Timing of Disclosure: Insights from the Acceleration of 10–K Filing Deadlines,* 32(6) J. of Acct. and Pub. Pol'y 475-(2013).

[286] *See* Joost Impink, Martien Lubberink, & Bart van Praag, *Did Accelerated Filing Requirements and SOX Section 404 Affect the Timeliness of 10–K Filings?,* 17(2) Rev. of Acct. Stud. 227 (2012) and Eli Bartov & Yaniv Konchitchki, *SEC Filings, Regulatory Deadlines, and Capital Market Consequences,* 31(4) Acct. Horizons 109 (2017).

later non-accelerated filer deadlines may reduce the timeliness and therefore usefulness of the disclosures to investors. Studies have found a reduction in the market reaction to disclosure when the reporting lag between the end of the period in question and the disclosure date is lengthy, as more of the information becomes available through other public channels.[287] Researchers have also questioned whether such lags increase information asymmetries, because some investors are more able to access or process information that could provide indirect insight into an issuer's financial status or performance through alternative channels.[288]

One study found that the 2003 acceleration of filing deadlines was associated with a decrease in the market reaction to the disclosure of annual reports for accelerated filers.[289] Based on this result and supplementary tests regarding the change in disclosure quality and change in timeliness after the acceleration of deadlines, the authors concluded that the negative effect of the shorter deadline on the quality of disclosure appeared to dominate the beneficial effect on the timeliness of the disclosure for these issuers.[290] While this finding might not be directly applicable 15 years later, and there is some evidence that some of these effects were temporary,[291] in the absence of other evidence we preliminarily expect the net effect of the extended filing deadlines to be beneficial on average but modest overall.

b. Disclosures Required of Accelerated Filers

Non-accelerated filers are not required to provide disclosure regarding the availability of their filings under Item 101(e)(4) of Regulation S–K. While some investors may benefit from reduced search costs due to such disclosures, we do not expect that extending the exemption from these disclosures to the affected issuers would have significant economic effects.

Non-accelerated filers are not required to provide disclosure required by Item 1B of Form 10–K or Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports. Studies have found that the eventual disclosure of staff comments and related correspondence, as well as interim information about these comments before they are made public, are value-relevant (in that they affect the pricing of securities) for investors.[292] While our understanding is that Items 1B and 4A disclosures are relatively uncommon,[293] extending the exemption from the requirement to disclose unresolved staff comments to the affected issuers may, in some circumstances, prevent the timely disclosure of value-relevant information to public market investors. Moreover, because Item 1B of Form 10–K and Item 4A of Form 20–F requires unresolved staff comments to be disclosed if they were made not less than 180 days prior to the end of that fiscal year, issuers no longer subject to this disclosure requirement may have a reduced incentive to resolve comments in a timely manner. This could reduce the efficiency of the review process and could increase the number of unresolved staff comments at any given time, and thus also decrease the quality of reporting for the period over which comments continue to be unresolved.

c. Transition Thresholds

The proposed amendments include revisions to the transition thresholds that address when an accelerated filer or large accelerated filer can transition into a different filer status. The proposed amendments would allow accelerated or large accelerated filers to become non-accelerated filers if they qualify under the SRC revenue test or meet a revised public float transition threshold. An issuer whose revenues previously exceeded the SRC initial revenue threshold of $100 million will not qualify under the SRC revenue test unless its revenues fall below $80 million. The $80 million transition threshold for the SRC revenue test is 80% of the initial threshold of $100 million in revenue. An issuer whose public float previously exceeded the $75 million initial threshold for accelerated filer status would become a non-accelerated filer if its public float fell below $60 million, or 80% of that initial threshold, as opposed to the current threshold of $50 million. Finally, the proposed amendments also revise the public float transition threshold for exiting large accelerated filer status and becoming an accelerated filer from $500 million to $560 million in public float, or 80% of the $700 million entry threshold, to align with the transition threshold for entering SRC status after having exceeded $700 million in public float.

The filer type exit thresholds in Rule 12b–2 are set below the corresponding entry thresholds to provide some stability in issuer classification given normal variation in public float and revenues. The exact placement of these thresholds involves a tradeoff between the degree of volatility in classification versus the extent to which the categories persistently include issuers that are below the initial entry thresholds. Table 16 illustrates this tradeoff using 20 years of data on the evolution of company year-end market capitalizations and revenues. While market capitalization is different from public float, we expect the volatility of these measures to be similar because changes in stock price represent the dominant source of variation in both measures.

TABLE 16—TRANSITIONS IN EQUITY MARKET CAPITALIZATION AND REVENUE LEVEL, 1998 THROUGH 2017[294]

Entry threshold	Exit threshold as percentage of entry threshold				
	60%	70%	80%	90%	100%
Percentage of new entrants that exit and re-enter over next two years:					

[287] *See, e.g.,* Dan Givoly & Dan Palmon, *Timeliness of Annual Earnings Announcements: Some Empirical Evidence,* 57(3) Acct. Rev. 486 (1982).

[288] *See, e.g.,* Nils Hakansson, *Interim Disclosure and Public Forecasts: An Economic Analysis and a Framework for Choice,* 52(2) Acct. Rev. 396 (1977) and Baruch Lev, *Toward a Theory of Equitable and Efficient Accounting Policy,* 63(1) Acct. Rev. 1 (1988). We note that Regulation FD generally prohibits public companies from disclosing nonpublic, material information to selected parties unless the information is distributed to the public first or simultaneously. *See* 17 CFR 243.100 to 17 CFR 243.103.

[289] *See* Jeffrey Doyle & Matthew Magilke, *Decision Usefulness and Accelerated Filing Deadlines,* 51(3) J. of Acct. Res. 549 (2013). We note that this study found the reverse to be true for large accelerated filers.

[290] *Id.*

[291] *See, e.g.,* Boland *et al.* 2015 Study, note 285 above.

[292] *See, e.g.,* Patricia Dechow, Alastair Lawrence, & James Ryans, *SEC Comment Letters and Insider Sales,* 91(2) Acct. Rev. 401 (2015) and Lauren Cunningham, Roy Schmardebeck, & Wei Wang, *SEC Comment Letters and Bank Lending,* Working Paper (2017), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2727860.*

[293] Based on staff analysis using the Intelligize database, approximately 20 issuers included Item 1B disclosures in Forms 10–K filed in 2017.

TABLE 16—TRANSITIONS IN EQUITY MARKET CAPITALIZATION AND REVENUE LEVEL, 1998 THROUGH 2017 [294]—Continued

Entry threshold	Exit threshold as percentage of entry threshold				
	60%	70%	80%	90%	100%
$700M market cap	3.0	3.5	4.7	6.6	9.5
$250 M market cap	3.1	4.0	5.1	6.9	9.1
$75M market cap	3.1	4.3	5.6	7.1	8.4
$100 M revenue	0.9	1.1	1.4	2.3	4.5
Percentage of new entrants that do not exit but are below entry threshold for next two years:					
$700 M market cap	5.7	3.4	1.6	0.4	0.0
$250 M market cap	4.6	2.8	1.4	0.5	0.0
$75M market cap	4.0	2.5	1.3	0.5	0.0
$100 M revenue	3.6	2.8	1.9	0.6	0.0

Consider an entry threshold of $700 million in market capitalization. The first panel of Table 16 demonstrates potential fluctuations in issuer classification based on this entry threshold. A higher exit threshold is associated with more volatility in classification. For example, an exit threshold of $700 million, or 100% of the entry threshold, would have led almost ten percent of the new entrants to exit the following year and then re-enter the year after that. Issuers and investors may be confused as a result of such frequent fluctuations in filer type. They may also bear resulting costs, such as (for issuers) the cost of frequently revising disclosure schedules and the scope of auditing contracts and (for investors) any incremental cost of evaluating the reliability of financial disclosures for an issuer that is not consistently subject to the ICFR auditor attestation requirement. The second panel of Table 16 demonstrates the persistence of classification for issuers that drop below the entry threshold. A lower exit threshold is associated with a greater number of issuers remaining in a particular category despite falling below the entry threshold. For example, in the first row of this panel, an exit threshold of $420 million, or 60% of the $700 million entry threshold, would have prevented almost six percent of the new entrants from exiting despite falling below the entry threshold in the next two years. A low exit threshold can thus risk having a filer status effectively apply to a broader group of issuers than intended.

[294] The estimates in this table are based on staff analysis of data from Compustat.

Table 16 demonstrates that the balance between limiting filer status volatility while enabling filer status mobility provided by an exit threshold of 80% is similar around a $250 million, $75 million, and $700 million market capitalization. We therefore expect the proposed increase in the thresholds to exit accelerated and large accelerated filer status to $60 and $560 million, or 80% of the entry thresholds, to lead to a similar tradeoff in these factors as the 80% public float threshold to re-enter SRC status. Table 16 also demonstrates that revenue is more stable than market capitalization, so the 80% threshold in the revenue test for exiting accelerated and large accelerated filer status is expected to provide a lower degree of filer status fluctuations for a comparable degree of filer status mobility. Overall, we expect the proposed transition thresholds to provide a tradeoff between filer status mobility and volatility that is consistent with the tradeoff provided by the recently revised SRC transition provisions.

6. Alternatives to the Proposed Amendments

Below we consider the relative costs and benefits of reasonable alternatives to the implementation choices in the proposed amendments.

a. Exclude All SRCs From Accelerated Filer Category

We have considered excluding all SRCs from the accelerated filer definition, consistent with the past alignment of the SRC and non-accelerated filer categories. This alternative would include SRCs that meet the revenue test, as proposed, as well as those that have a public float of less than $250 million when initially determining SRC status.

Incremental Benefits of Excluding All SRCs From Accelerated Filer Category

This alternative would have several benefits, such as promoting regulatory simplicity and reducing any frictions or confusion caused by issuers having to make multiple determinations of their filer type. It would also expand the benefits of the proposed amendments to additional issuers. We estimate that 357 additional issuers [295] would be non-accelerated filers rather than accelerated filers under this alternative, of which 68 are EGCs and 289 would newly be exempt from the ICFR auditor attestation requirement under SOX Section 404(b) (although we estimate that 13 of these newly exempt filers would still be subject to the FDIC auditor attestation requirement).

To estimate the benefits to these additional issuers, we begin by considering the audit fees of lower-float issuers of different types, as we did for low-revenue issuers in Table 12 of Section III.C.3. These results are presented in Table 17.

[295] This estimate is based on staff analysis of the number of accelerated filers in 2017 with public float of at least $60 million but less than $250 million and prior fiscal year revenues of at least $100 million and that are eligible to be SRCs (*i.e.,* excluding ABS issuers, RICs, BDCs, and subsidiaries of non-SRCs). Revenue data is sourced from XBRL filings, Compustat, and Calcbench. *See* note 116 above for details on the identification of the population of accelerated filers. We note that the incremental number of affected issuers could be higher than this estimate because there are approximately 230 issuers, the vast majority of which are foreign issuers, for which filer status and/or public float data are not available (and revenue data is either unavailable or revenues are at least $100 million).

TABLE 17—AVERAGE TOTAL AUDIT FEES IN DOLLARS BY FILER TYPE [296]

	Issuers with public float <$250 million		
	Accelerated (ex. EGCs)	Non-Accelerated (ex. EGCs)	EGC
2014	$750,550	$294,576	$232,006
2015	723,337	309,296	239,374
2016	837,010	419,357	225,294
2017	842,675	438,939	244,554
Average/year	*788,393*	*365,542*	*235,307*

The analysis includes, per year, 551 to 675 lower-float accelerated filers (other than EGCs), 1,537 to 2,784 lower-float non-accelerated filers (other than EGCs), and 163 to 985 lower-float EGCs.[297] For these lower-float issuers, the difference between the average annual audit fees for accelerated filers subject to the ICFR auditor attestation requirement and the comparison populations that are exempt from this requirement represents, as a percentage of the total audit fees for accelerated filers, roughly 50 to 70% of those total audit fees.[298] This range of percentages is significantly higher than the estimates of the cost of an ICFR auditor attestation from other sources discussed in Section III.C.3.b above. Also, as discussed in Section III.C.2 above, the lower audit fees for the comparison populations may be partially attributable to their smaller size, and the disparity in size in this case is greater than in the analysis of a revenue threshold.[299] We therefore select a lower estimate of 40% for the audit fee savings associated with an exemption of these issuers from the ICFR auditor attestation requirement, which is still significantly higher than the 25% we applied for low-revenue issuers and is higher than the five percent to 35% range of estimates from other sources, resulting in an estimate of 40% of $788,393 or about $315,000 in average savings on audit fees under this alternative.

Adding this cost savings to our estimate of additional potential compliance cost savings beyond audit fee savings of $100,000 from Section III.C.3.d above, for which the analysis for lower public float issuers would not differ, we estimate an average cost savings of $415,000 for the additional issuers that would be affected under this alternative, with some of these issuers experiencing lesser or greater savings. This represents a significant cost savings for issuers with less than $250 million in public float and may thus have beneficial economic effects on competition and capital formation. As discussed above, smaller issuers generally bear proportionately higher compliance costs than larger issuers. Reducing these additional issuers' costs would reduce their overhead expenses and may enhance their ability to compete with larger issuers. To the extent that the cost savings for the additional affected issuers enable capital investments that would not otherwise be made, this alternative would also lead to additional benefits in capital formation.

Incremental Costs of Excluding all SRCs From Accelerated Filer Category

This alternative could also impose several costs. Overall, we expect costs of this alternative to be greater than for the proposed amendments, primarily due to the broader application of the exemption from the ICFR auditor attestation requirement and the diminished impact of some of the mitigating factors discussed in Section III.C.4 above on SRCs that meet the public float test rather than the revenue test.

To explore these potential costs further, we follow the analysis set forth in Section III.C.4 above. We begin by considering the potential impact of an exemption from the ICFR auditor attestation requirement on the effectiveness of ICFR and reliability of financial statements for these issuers. Table 18 presents our estimates of the percentage of issuers with public float below $250 million and those with public float of at least $250 million that report ineffective ICFR in their management report in recent years. We compare accelerated filers (other than EGCs) to EGCs because the latter are not currently subject to the ICFR auditor attestation requirement but may have public float that is greater or less than $250 million (while non-accelerated filers are not suitable for this analysis because they would generally not have public float of greater than $250 million). We omit the year 2014 in the second panel because of an insufficient sample of EGCs with public float greater than $250 million in 2014.

TABLE 18—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR IN MANAGEMENT REPORT [300]

Ineffective ICFR Year	Accelerated (ex. EGCs) (percent)	EGC (percent)
Public Float <$250M:		
2014	9.0	46.6
2015	9.5	48.0

[296] The estimates in this table are based on staff analysis of data from Ives Group Audit Analytics and public float data from XBRL filings. The accelerated and non-accelerated categories exclude EGCs. *See* note 116 above for details on the identification of filer type.

[297] The analyses in Table 18 and 19 that follow exclude non-accelerated filers (other than EGCs) because of a lack of higher-float non-accelerated filers and also include, per year, 436 to 583 higher-float accelerated filers (other than EGCs) and 89 to 135 higher-float EGCs. The sample size varies across years and is based on issuers of a given filer type with public float data available from XBRL filings and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. *See* note 116 above for details on the identification of filer type.

[298] For non-accelerated filers other than EGCs, the average difference is $788,393 minus $365,542, or $422,851, which is about 53.6% of $788,393. For EGCs, the average difference is $788,393 minus $235,307, or $553,086, which is about 70.2% of $788,393.

[299] In the case of low-revenue issuers, the assets and employees of the comparison population were about one-third of what they were for the accelerated filers in the analysis, as discussed in Section IV.C.2 above. In the case of low float issuers, the assets and employees of the comparison population are about one-fifth of what they were for the accelerated filers in the analysis.

TABLE 18—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR IN MANAGEMENT REPORT [300]—Continued

Ineffective ICFR Year	Accelerated (ex. EGCs) (percent)	EGC (percent)
2016	10.9	50.0
2017	10.5	51.8
Average/year	*10.0*	*49.1*
Public Float ≥$250M:		
2015	7.7	11.2
2016	6.3	12.6
2017	8.0	7.6
Average/year	*7.3*	*10.5*
Difference in average/year	*2.7*	*38.6*

As in the case of EGCs and non-accelerated filers (other than EGCs) with low revenues, as shown in Table 13, Table 18 demonstrates that EGCs with lower public float are significantly more likely to report ineffective ICFR than those with higher public float. In comparison, as in the case of our revenue analysis, there is not a distinct pattern in the rate of ineffective ICFR across this public float threshold for accelerated filers. EGCs with lower public float report ineffective ICFR at a rate that is almost 40 percentage points higher than EGCs with higher public float or accelerated filers (other than EGCs) with lower public float. As in our estimation for low-revenue issuers, we acknowledge the potential inflation of these statistics due to the relation between size and age and rates of material weakness. Because we have a single comparison sample in this case, rather than a range of statistics based on two comparison samples as in our analysis based on revenue, we apply a downward adjustment to account for these differences and preliminarily estimate that extending the exemption from the ICFR auditor attestation requirement to issuers that are eligible to be SRCs based on their public float may result in an average increase in the rate of ineffective ICFR of about 25 percentage points among these issuers, somewhat higher than our estimate for low-revenue issuers. We next look to see whether, as with the low-revenue issuers analyzed in Section III.C.4, there are mitigating factors that could limit the potential adverse effects of extending the exemption from the ICFR auditor attestation requirement.

Table 19 presents the rate of restatements in recent years by issuers in these categories. As in the case of Table 18, 2014 is excluded in the second panel due to an insufficient sample size of high float EGCs.

TABLE 19—PERCENTAGE OF ISSUERS ISSUING RESTATEMENTS BY YEAR OF RESTATED FINANCIALS, BY PUBLIC FLOAT CATEGORY [301]

Restated year	Accelerated (ex. EGCs) (percent)	EGC (percent)
Public Float <$250M:		
2014	10.4	17.2
2015	12.3	16.2
2016	7.3	8.8
Average/year	*10.0*	*14.1*
Public Float ≥$250M:		
2015	10.1	16.9
2016	8.3	11.9
Average/year	*9.2*	*14.4*
Difference in average/year	*0.8*	*−0.3*

In this case, the results are distinct from the results in Table 14, which had analyzed the restatement rates for issuers around the $100 million revenue threshold. As shown in Table 14, low revenue issuers restated their financial statements at rates that were three to nine percentage points lower than for higher revenue issuers, whether or not they were subject to the ICFR auditor attestation requirement. In contrast, as shown in Table 19, restatement rates are quite similar above and below a $250 million public float threshold. We therefore believe that the proposition that low-revenue issuers may, on average, be less susceptible to certain kinds of misstatements may not apply to the same extent to issuers with low public float. Because the lower-float EGCs on average restate their financials

[300] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data and public float data from XBRL filings. ICFR effectiveness is based on the last amended management report for the fiscal year. Percentages are computed out of all issuers of a given type and float category with a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. The accelerated category excludes EGCs. 2014 statistics are omitted in this table, relative to Table 13, because of an insufficient sample of EGCs with float greater than $250 million in that year. *See* note 116 above for details on the identification of filer type.

[301] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data and public float data from XBRL filings. Percentages are computed out of all issuers of a given filer type and float category with a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. The accelerated category excludes EGCs. 2014 statistics are omitted in this table, relative to Table 14, because of an insufficient sample of EGCs with float greater than $250 million in that year. *See* note 116 above for details on the identification of filer type.

at a rate about four percentage points higher than that for lower-float accelerated filers (other than EGCs), which is comparable to the five percentage point difference between the corresponding rates for low-revenue EGCs and low-revenue accelerated filers (other than EGCs) in Table 14, we preliminarily estimate that the increase in restatement rates for the additional affected issuers may be comparable to the two percentage points we estimated for low-revenue issuers. However, in contrast to the results for low-revenue issuers, this effect may result in higher restatement rates for the affected issuers than for the higher public float issuers that would remain accelerated filers.

To the extent that extending the exemption from the ICFR auditor attestation requirement may reduce the reliability of financial statements for the affected issuers, Table 15 in Section III.C.4 demonstrates that the potential adverse impact of such a change may be mitigated by the lower empirical relevance of financial statements for the market valuation of these issuers. Therefore, we next consider whether a similar proposition could hold for lower public float issuers. In Table 20, we consider the extent to which the variation in stock returns can be explained by the variation in earnings and changes in earnings for these lower and higher public float issuers over a 20-year horizon. We use market capitalization as a rough proxy for public float, given the limited availability of public float data over the horizon of this analysis. We cannot reliably apply the relevance analysis using market capitalization that we considered in the first two rows of Table 15 in this setting because dividing the sample by the same variable that is being analyzed in a regression analysis like this one generally results in biasing estimates downward (an ''attenuation bias''), and we are unable to correct for such a bias. However, the analysis below based on stock returns mirrors the analysis in the third row of Table 15 and should not be subject to such a bias.

TABLE 20—PERCENTAGE OF VARIATION IN MARKET PERFORMANCE EXPLAINED BY VARIATION IN FINANCIAL PERFORMANCE FOR 1998 THROUGH 2017, BY MARKET CAPITALIZATION CATEGORY [302]

Market variable	Explanatory variables	Market Cap <$250M (percent)	Market Cap ≥$250M (percent)
Stock return	Earnings, change in earnings	6.7	6.7

We find that the percentage of the variation in returns that is explained by the explanatory financial variables is similar for issuers with market capitalization of less than $250 million as compared to those with higher market capitalization, at about 6.7%. That is, it does not appear that the market relies on financial statements to a lesser extent for the valuation of issuers with public float less than $250 million (as compared to issuers with a larger public float), and so this further mitigating factor that applies to low-revenue issuers likely does not apply equally to lower public float issuers.

Finally, as in Section III.C.3, we re-examine responses to the 2008–2009 Survey. When asked about the net benefits of complying with SOX Section 404, 16% of respondents at accelerated filers with public float of less than $250 million claimed that the costs far outweighed the benefits, in contrast to, as reported above, 30% of respondents at accelerated filers with revenues of less than $100 million.[303] While this survey data is somewhat dated, it provides an indication as to the perception by executives at issuers at that time of the relative costs and benefits of the ICFR auditor attestation requirement. To the extent that this perception is borne out by the actual costs and benefits of the ICFR auditor attestation requirement for issuers that meet the SRC revenue test and for those that would otherwise be SRCs under the public float test, this data may suggest that low-revenue issuers would benefit more from qualifying as non-accelerated filers than would other types of SRCs.

We are soliciting comment on our analysis of the benefits and costs of extending non-accelerated filer status to all SRCs and whether there are benefits and/or costs of this alternative that we have overlooked. We particularly invite comment on the methodology used to carry out this analysis and any suggestions for alternative or supplemental methodologies to help inform our analysis.

b. Include or Exclude Certain Issuer Types

Alternatively, we have considered approaches that would include or exclude additional issuer types. For example, we could extend non-accelerated filer status to other issuers with between $75 million and $700 million in public float that meet the SRC revenue test but would not be eligible to be SRCs due to other reasons. In particular, BDCs and majority-owned subsidiaries of non-SRCs cannot qualify as SRCs and are not otherwise excluded from the ICFR auditor attestation requirement. We estimate that 28 BDCs and one majority-owned subsidiary of a non-SRC parent would meet the same public float and revenue thresholds as the affected issuers.[304] We estimate that 29 BDCs have a market capitalization between $75 million and $700 million, and of these BDCs, 13 have market capitalizations between $250 million and $700 million and the remainder had market capitalizations between $75 million and $250 million. Given the limited number of issuers that are excluded due to their disqualification from SRC status, we preliminarily expect the aggregate incremental costs and benefits of this alternative relative to the proposed approach to be modest,

[302] The reported statistics are adjusted R-squared statistics based on regression analysis by staff using data from the Standard & Poor's Compustat and Center for Research in Security Prices databases. Market value and financial variables are measured as of the end of the fiscal year. Earnings is income before extraordinary items. Stock return is the 15-month stock return ending three months after fiscal year-end, to account for reporting lags. Earnings are scaled by the lagged market value of equity, and outliers in one percent tails of variable distributions are dropped to reduce noise. *See* Francis and Schipper 1999 Study for additional details.

[303] These estimates are based on staff analysis of data from the 2008–09 Survey. The analysis considers responses pertaining to the most recent year for which a given respondent provided a response. We note that the rate of responses to the question about net benefits was lower than for other questions. *See* 2009 SEC Staff Study, note 123 above, and Alexander *et al.* 2013 Study, note 197 above, for details on the survey and analysis methodology.

[304] Our staff used market capitalization valuations as of February 2019 to determine the set of potentially affected BDCs. While this methodology is different than the approach used by Rule 12b–2, which uses the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates as of the last business day of the issuer's most recent second fiscal quarter, we do not believe that it would substantially change our analysis. This analysis did not remove BDCs who may qualify as non-accelerated filers based on their status as EGCs. After identifying the set of potentially affected BDCs, our staff manually reviewed the most recent Form 10–K filed on our EDGAR system for each BDC.

as compared to the universe of Form 10–K filers, although they could be significant for any particular issuer and significant for BDCs as a class of Form 10–K filers as we estimate the total number of BDC filers to be 50 (of which six have a market capitalization below $75 million and would be already considered non-accelerated filers).

Since BDCs do not report revenue on their financial statements, we examined potential alternative metrics to the SRC revenue test threshold of less than $100 million. Of the 29 BDCs with a market capitalization between $75 million and $700 million, our review found that only one BDC reported investment income in excess of $100 million. No BDC reported changes in net realized and unrealized gains and losses or net increase in net assets resulting from operations in amounts greater than $100 million.

TABLE 21—CHARACTERISTICS OF BDCS WITH MARKET CAPITALIZATION BETWEEN $75 AND $700 MILLION

[In millions]

	Market capitalization as of February 2019	Investment income for most recent fiscal year	Net realized and unrealized gains and losses for most recent fiscal year	Net increase in net assets resulting from operations for most recent fiscal year
High	$507.91	$108.28	$43.12	60.69
Low	89.69	1.62	(−123.33)	(−114.28)
Average	255.30	49.37	(−11.15)	7.70
Median	244.72	47.67	(−4.44)	13.01

We also considered whether to permit BDCs to provide an independent public accountant's report on internal controls, similar to the one required by RICs on Form N–CEN, since both RICs and BDCs prepare financial statements under Article 6 of Regulation S–X,[305] in place of the auditor attestation required by SOX Section 404(b). We considered whether such a substitution should be permitted for all BDCs or only those BDCs that would no longer be required to provide a report under SOX Section 404(b) if BDCs were permitted to be a non-accelerated filer based on a test similar to the SRC revenue test. We do not have any data, however, regarding the potential benefits and costs of using a Form N–CEN report on internal controls as compared to the auditor attestation required by SOX Section 404(b).

We have also considered excluding FPIs, which are included in the affected issuers to the extent that they meet the required thresholds and other qualifications, from the proposed amendments. Researchers have found that the restatement rates of foreign issuers may be artificially depressed due to a lower likelihood of detection and disclosure of misstatements for these issuers.[306] It is therefore possible that encouraging more effective ICFR through an ICFR auditor attestation requirement may be particularly important for such issuers. However, because of limitations in the availability of data such as filing status or public float for many FPIs, we are unable to reliably measure the potential effects for this subset of issuers. Because low-revenue FPIs may have similar characteristics to low-revenue domestic issuers, including them in the group of affected issuers may help to maintain an even playing field for competition amongst these issuers and avoid discouraging foreign companies from issuing securities in U.S. public markets.

c. Alternative Threshold or Alternative Metrics

We have considered alternative levels at which a revenue threshold could be set. A $100 million dollar revenue threshold was recommended, in conjunction with a public float threshold, for the accelerated filer definition as well as the SRC definition by the 2017 Small Business Forum and a participant at the September 2017 meeting of the ACSEC.[307] The $100 million threshold is also aligned with the SRC revenue test. Empirically, we find no obvious break in the distribution of revenue or in the results of our analysis. In general, lowering the revenue threshold would reduce the expected benefits of the proposed amendments by reducing the number of issuers that would experience cost savings, while also reducing the expected costs of the proposed amendments by reducing the potential adverse impact on the reliability of financial statements. Increasing the threshold would increase the expected benefits while also increasing the expected costs.

d. Disclosure

While filer status is reported prominently on the cover page of annual reports for most issuers, there is not similarly prominent disclosure of whether an ICFR auditor attestation is provided. In addition to, or in lieu of, the proposed amendments, we could permit or require such disclosure, as recommended by the GAO.[308] This would make it easier for investors to identify issuers that undergo a voluntary ICFR auditor attestation with only minimal additional disclosure expense for registrants. This, in turn, may enhance the value to issuers of pursuing an ICFR auditor attestation even when it is not required. While those issuers that voluntarily obtain an ICFR auditor attestation would bear additional costs to do so, we expect they would voluntarily bear these costs only if they believe that the associated issuer-level benefits (*e.g.,* a reduced cost of capital), which could be enhanced by more prominent disclosure, would more than offset those costs. Voluntary compliance with the ICFR auditor attestation requirement by some of the issuers for which this requirement would be eliminated, as discussed above, could mitigate some of the potential negative effects of the proposed amendments. However, we note that investors can already ascertain whether an ICFR auditor attestation is included by searching an issuer's annual report, and

[305] 17 CFR 210.6–01 *et seq.*

[306] *See, e.g.,* Suraj Srinivasan, Aida Sijamic Wahid, & Gwen Yu, *Admitting Mistakes: Home Country Effect on the Reliability of Restatement Reporting,* 90(3) Acct. Rev. 1201 (2015).

[307] *See* Final Report of the 2017 SEC Government Business Forum on Small Business Capital Formation (Mar. 2018), available at *https://www.sec.gov/files/gbfor36.pdf;* and William J. Newell, Presentation at ACSEC Meeting *Sarbanes-Oxley Section 404(b): Costs of Compliance and Proposed Reforms,* (Sept. 13, 2017), available at *https://www.sec.gov/info/smallbus/acsec/william-newell-acsec091317.pdf.*

[308] *See* 2013 GAO Study, note 115 above.

that including additional items on the annual report cover page could marginally decrease the salience of each item already reported there.

D. Request for Comment

Throughout this release, we have discussed the anticipated costs and benefits of the proposed amendments. We request and encourage any interested person to submit comments regarding the proposed amendments and all aspects of our analysis of the potential effects of the amendments. We request comment from the point of view of investors, issuers, and other market participants. With regard to any comments, we note that such comments are particularly helpful to us if accompanied by quantified estimates or other detailed analysis and supporting data regarding the issues addressed in those comments. We also are interested in comments on the alternatives presented in this release, in particular, the alternative of extending non-accelerated filer status to all SRCs, as well as any additional alternatives to the proposed amendments that should be considered.

1. What are the costs and benefits of the proposed amendments for investors and issuers? For example, what are the direct costs associated with an ICFR auditor attestation requirement, such as audit fees, as well as indirect costs, such as those related to managerial time and attention, for the group of SRCs that would be exempted from that requirement under the proposed approach? What would be the effects on potential direct and indirect benefits associated with the ICFR auditor attestation requirement for the group of SRCs that would be exempted from that requirement under the proposed approach? Is it possible to relate the benefits to restatement rates or other measures of financial reporting quality for this group? What would be the effect on these issuers' cost of capital and investor confidence?

2. For issuers with revenues of less than $100 million, how do the costs of ICFR auditor attestations compare with the benefits? Do such issuers have simpler financial statements, less variation in their revenue arrangements, fewer revenue-related records to reconcile, or other characteristics that lead to a lower opportunity for misstatements? Or do such issuers have a greater opportunity for errors, perhaps due to staffing constraints or to lower external scrutiny of their disclosures?

3. Do investors rely to a lesser extent on the financial statements of issuers with revenues of less than $100 million than on the financial statements of other types of issuers when making investment decisions? Or is the reliability of the financial statements of such issuers particularly important for valuation because of the sensitivity of future projections to current data?

4. To what extent is the ability of investors to gauge the reliability of financial statements likely to be affected by the proposed amendments? To what extent is the actual reliability of financial statements likely to be affected by the proposed amendments?

5. We request comment on our estimate of the number of affected issuers, our estimates of the internal and external costs of the ICFR auditor attestation requirement, our estimates of the potential changes in the rates of ineffective ICFR and restatements among the affected issuers, and other estimates made in this release. We also request comment on whether there are additional costs and benefits that we can reliably quantify, and request any data that could allow us to make more precise estimates.

6. We request comment on our analysis of existing studies. Are there additional considerations or additional studies that we should consider?

7. We request comment on the methodologies used to estimate the internal and external costs of the ICFR auditor attestation requirement, to estimate the potential changes in rates of ineffective ICFR and restatements, and to make other estimates in this release. Is our consideration of the experience of issuers that are not currently subject to the ICFR auditor attestation requirement (non-accelerated filers, other than EGCs, and EGCs) in estimating the potential effects on the affected issuers appropriate? Are our estimates and the related adjustments that we make when comparing accelerated filers with issuers that are not currently subject to the ICFR auditor attestation requirement appropriate given the smaller size and lower age of the issuers in our comparison samples? Are there alternative methodologies that we should consider?

8. We request comment on our estimate of the average savings on audit fees that would be associated with the proposed amendments. Is our estimate of audit fee savings of about 25% of total audit fees or about $110,000 per year on average across the issuers that would be newly exempt from the ICFR auditor attestation requirement appropriate, too high, or too low? We request specific estimates of fees paid to auditors by issuers to obtain ICFR auditor attestations, separated to the extent possible from other audit costs and accounting for the risk assessment standards that would apply even to a financial statement only audit. We also request specific estimates of other costs associated with obtaining these attestations, such as the hours of managerial and internal staff time spent to facilitate the audit of ICFR. In addition, we request data that would allow us to better understand how all of these costs vary across issuers of different types.

9. We request statistics on FPIs that would allow us to better characterize the anticipated effects on these issuers. Do low-revenue FPIs have similar characteristics as low revenue domestic issuers?

10. We request statistics and analysis that would allow us to better understand the externalities that the quality of ICFR at one issuer may have on other issuers and on the market as a whole.

11. Would issuers or auditors take actions in response to the proposed amendments that would affect the potential economic effects of the proposed amendments? If so, what actions would they take and why? Do issuers currently take actions to stay below the accelerated filer public float threshold? If so, to what extent would such actions be expected to continue or change under the proposed amendments? Is the pricing of auditing services for all issuers likely to change as a result of the proposed amendments? For example, are auditors likely to change the incremental fees they charge for integrated, rather than financial statement only, audits due to the decrease in the number of companies required to obtain an ICFR auditor attestation?

12. Are there current or developing auditing practices or technology that may impact the economic effects of the proposed amendments? What are those practices or technology and what effects are they likely to have? For example, are there anticipated effects of the proposed amendments on the cost or quality of substantive testing in the financial statement audit? Are there any effects of automation technology in auditing that we should consider? Overall, how would accounting for such auditing practices or technology change the analysis of the benefits and costs of the proposed amendments and alternatives in this release?

13. We request comment on our analysis of the benefits and costs of the alternative of extending non-accelerated filer status to all SRCs, including the quantitative estimates of the number of additional affected issuers, the cost savings, and the potential impact on the rate of ineffective ICFR and restatements

for these additional affected issuers. Are there additional benefits and/or costs of this alternative that we have overlooked? What would be the effects of this alternative on efficiency, competition, and capital formation?

14. We request comment on the alternative of requiring or permitting prominent disclosure of whether an ICFR auditor attestation is provided, either in addition to, or in lieu of, amendments to the accelerated filer and large accelerated filer definitions. For example, what would be the economic effects of requiring issuers to prominently identify whether they voluntarily comply with the ICFR auditor attestation requirement, such as adding a check box to the cover page of appropriate filings? Would such disclosure result in more voluntary compliance with the ICFR auditor attestation requirement? Could prominent disclosure of whether an ICFR auditor attestation is included have the unintended consequence of confusing investors, such as by leading some investors to incorrectly interpret the cover page disclosure as a sign of effective ICFR even if the more detailed disclosure included in the ICFR auditor attestation report shows otherwise?

15. We request comment on alternative approaches that would include or exclude additional issuer types. For example, what would be the economic effects of allowing BDCs and/or subsidiaries of non-SRCs, which are excluded from the definition of an SRC, to be non-accelerated filers if they meet the proposed thresholds? What would be the economic effects of excluding FPIs from the proposed changes? What would be the economic effects of using a different threshold or different metric to identify the additional issuers that would become non-accelerated filers? What would be the economic effects of allowing all BDCs that meet the public float and revenue thresholds in the SRC definition, or those criteria with any alternative metric in lieu of annual revenues, to be non-accelerated filers? For BDCs, what would be the benefits and costs to providing an independent public accountant's report on internal controls required by Form N–CEN as compared to an auditor attestation under SOX Section 404(b)? What would be the economic effects on BDC investors if a Form N–CEN report on internal controls was provided in place of a SOX Section 404(b) attestation? Does it decrease the efficiency of independent auditors to provide different types of internal control audits for RICs and BDCs, even though both types of issuers provide financial reporting under Article 6 of Regulation S–X? Are there other alternatives we should consider?

16. What effect would the proposed amendments have on competition? Would the proposed amendments put any issuers at a significant competitive advantage or disadvantage? If so, what changes to the proposed requirements could mitigate any such impact?

17. What effect would the proposed amendments have on efficiency? How could the proposed amendments be changed to promote any positive effect or to mitigate any negative effect on efficiency?

18. What effect would the proposed amendments have on capital formation? Are there any positive or negative effects of the proposed amendments on capital formation that we have overlooked? How could the proposed amendments be changed to better promote capital formation or to mitigate any negative effect on capital formation resulting from the amendments?

IV. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (''PRA''). We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[309] The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- ''Form 10–K'' (OMB Control No. 3235–0063);
- ''Form 10–Q'' [310] (OMB Control No. 3235–0070); [311]
- ''Form 20–F'' (OMB Control No. 3235–0288);
- ''Form 40–F'' (OMB Control No. 3235–0381); and
- ''Regulation 12B'' [312] (OMB Control No. 3235–0062); [313]

The regulation and forms listed above were adopted under the Exchange Act. The regulation and forms set forth the disclosure requirements for periodic reports filed by registrants to help investors make informed investment decisions. A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the proposed amendments can be found in Section III above.

B. Burden and Cost Estimates Related to the Proposed Amendments

We estimate that the proposed amendments would result in approximately 539 additional issuers being classified as non-accelerated filers.[314] Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports.[315] Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports.

1. ICFR Auditor Attestation Requirement

We believe that eliminating the ICFR auditor attestation requirement would reduce the PRA burden for 358 of the 539 affected issuers.[316] An ICFR auditor

[309] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[310] 17 CFR 249.308a.

[311] The only proposed revision to this form would be changing filing deadlines, which would neither increase nor decrease the burden hours necessary to prepare the filing because there would be no change to the amount of information required in the filing.

[312] 17 CFR 240.12b–1 through 240.12b–37.

[313] Our estimates for Forms 10–K, 20–F, and 40–F take into account the burden that would be incurred by including the proposed disclosure in the applicable annual report. To avoid a PRA inventory reflecting duplicative burdens, we estimate that the proposed disclosure would not impose an incremental burden related to Regulation 12B.

[314] *See* Section III.C.1 above.

[315] *See* Section I.A above.

[316] We estimate that the remaining 181 of the 539 affected issuers are EGCs, which are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b). *See* Section III.C.1 above. In addition to the 181 EGCs, we estimate that a further 76 of the 539 affected issuers are currently also subject to the FDIC's auditor attestation requirement. *See* Section 18A of Appendix A to FDIC Rule 363. These issuers would continue to incur burden hours and costs associated with an auditor attestation requirement even if the proposed amendments were adopted. However, the FDIC's auditor attestation requirement is not part of our rules. For purposes of considering the PRA effects of the proposed amendments, therefore, we have reduced the burden hours and costs for these 76 issuers as we would for the other affected issuers that are not EGCs.

attestation is required only in annual reports on Forms 10–K, 20–F, and 40–F. Table 22, below, shows the estimated number of affected issuers that are subject to the ICFR auditor attestation requirement that file on each of these forms and the average estimated audit-fee and non-audit costs, as described above,[317] to comply with the ICFR auditor attestation requirement.

TABLE 22—ESTIMATED ANNUAL COSTS PER ISSUER OF ICFR AUDITOR ATTESTATION REQUIREMENT FOR SPECIFIED FORMS

Form type	Number of affected issuers	Audit-fee costs per issuer	Non-audit costs per Issuer
Form 10–K	322	$110,000	$100,000
Form 20–F	35	110,000	100,000
Form 40–F[318]	1	110,000	100,000

Because these issuers would no longer be subject to the ICFR auditor attestation requirement under the proposed amendments, they would no longer incur these costs. For purposes of the PRA, this reduction in total burden is to be allocated between a reduction in internal burden hours and a reduction in outside professional costs. Table 23, below, sets forth the percentage estimates we typically use for the burden allocation for each form.

TABLE 23—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS

Form type	Internal (percent)	Outside professionals (percent)
Form 10–K	75	25
Form 20–F	25	75
Form 40–F	25	75

For the $100,000 reduction in annual non-audit costs,[319] we allocate the burden based on the percentages in Table 23 above. However, we believe that 100% of the $110,000 annual burden reduction for audit-fee costs related to the ICFR auditor attestation requirement should be ascribed to outside professional costs because that amount is an estimate of fees paid to the independent auditor conducting the ICFR attestation audit. Table 24, below, shows the resulting estimated reduction in cost per issuer associated with outside professionals.

TABLE 24—ESTIMATED REDUCTION IN OUTSIDE PROFESSIONAL COSTS FROM PROPOSED ELIMINATION OF ICFR AUDITOR ATTESTATION REQUIREMENT

Issuer type (form used)	Outside professional costs per issuer (Non-audit)	Outside professional costs per issuer (audit fees)	Total outside professional costs per issuer (non-audit + audit fees)	Number of affected issuers	Total proposed reduction in outside professional costs
Form 10–K	$25,000	$110,000	$135,000	322	$43,470,000
Form 20–F	75,000	110,000	185,000	35	6,475,000
Form 40–F	75,000	110,000	185,000	1	$185,000

For PRA purposes, an issuer's internal burden is estimated in internal burden hours. We are, therefore, converting the internal portions of the non-audit costs to burden hours. These activities would mostly be performed by a number of different employees with different levels of knowledge, expertise, and responsibility. We believe these internal labor costs will be less than the $400 per hour figure we typically use for outside professionals retained by the issuer. Therefore, we use an average rate of $200 per hour to estimate an issuer's internal non-audit labor costs. Table 25, below, shows the resulting estimated reduction in internal burden hours from the proposed elimination of the ICFR auditor attestation requirement.

[317] *See* Sections III.C.3 and III.C.5 above.

[318] Form 40–F does not require disclosure of filer status or public float, which makes it very difficult to determine filer status. So as not to overestimate the burden hour and cost reduction of the proposed amendments, we estimate that only one MJDS issuer that files on Form 40–F would not be subject to the ICFR auditor attestation requirement.

[319] As discussed in Section III.C.3, above, in deriving this estimate of the reduction in non-audit costs, we have looked to outside vendor and internal labor costs, and not to non-labor costs, because we believe that those non-labor costs (such as software, hardware, and travel costs) are primarily attributable to management's ICFR responsibilities under SOX Section 404(a) and thus would continue to be incurred. To the extent elimination of the auditor attestation requirement also results in a reduction in management's time burden, we believe this reduction generally would be captured by the estimated $100,000 reduction, as this amount reflects an overall reduction in non-audit costs.

TABLE 25—ESTIMATED REDUCTION IN INTERNAL BURDEN HOURS FROM PROPOSED ELIMINATION OF ICFR AUDITOR ATTESTATION REQUIREMENT

Issuer type (form used)	Internal cost per issuer (non-audit)	Burden hours per issuer (internal cost/ $200)	Number of affected issuers	Total proposed reduction in internal burden hours
Form 10–K	$75,000	375	322	120,750
Form 20–F	25,000	125	35	4,375
Form 40–F	25,000	125	1	125

2. Filing Deadlines; Disclosure Regarding Filing Availability and Unresolved Staff Comments

As the Commission has recognized previously, changing filing deadlines neither increases nor decreases the burden hours necessary to prepare the filing because there is no change to the amount of information required in the filing.[320] Therefore, we do not believe that the proposed change to the filing deadlines would affect an issuer's burden hours or costs for PRA purposes.

We believe that eliminating the requirements to provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports would reduce their burden hours and costs, but we do not expect that reduction to be significant. As opposed to the burden reduction resulting from the elimination of the ICFR auditor attestation requirement, which would apply only to 358 of the 539 total affected issuers that are not EGCs, the burden reduction from eliminating these disclosure requirements would apply to all the 539 affected issuers, including the 181 affected issuers that are EGCs. Of these 181 affected EGC issuers, 160 file annual reports on Form 10–K, 21 file annual reports on Form 20–F, and none file annual reports on Form 40–F. For purposes of the PRA, we estimate the reduction to be approximately one hour for each of the 539 affected issuers.[321] That reduction is allocated by form as shown in Table 26, below.

TABLE 26—ESTIMATED REDUCTION IN INTERNAL BURDEN HOURS PER ISSUER FROM PROPOSED ELIMINATION OF DISCLOSURE REQUIREMENTS REGARDING FILING AVAILABILITY AND UNRESOLVED STAFF COMMENTS

Form type	Burden hours per issuer	Number of affected issuers	Proposed reduction in internal burden hours
Form 10–K	1	482	482
Form 20–F	1	56	56
Form 40–F	1	1	1

3. Total Burden Reduction

Table 27, below, shows the total estimated reduction in internal burden hours and outside professional costs for all aspects of the proposed amendments.

TABLE 27—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

	Current burden			Proposed burden change					
	Current annual responses	Current burden hours	Current cost burden	Proposed change in company hours from auditor attestation	Proposed change in company hours from disclosure requirement elimination	Proposed total change in company hours	Proposed change in professional costs	Proposed burden hours for affected responses	Proposed cost burden for affected responses
	(A)	(B)	(C)	(D)	(E)	(F) = (D) + (E)	(G)	(H) = (B) + (F)	(I) = (C) + (G)
10–K	8,137	14,217,344	$1,896,280,869	(120,750)	(482)	(121,232)	($43,470,000)	14,096,112	$1,852,810,869
20–F	725	480,226	576,270,600	(4,375)	(56)	(4,431)	(6,475,000)	475,795	569,795,600
40–F	160	14,187	17,025,360	(125)	(1)	(126)	(185,000)	14,187	16,840,360

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

[320] *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports,* Release No. 33–8644 (Dec. 21, 2005) [70 FR 76634 (Dec. 27, 2005)].

[321] We believe that this one-hour reduction will be solely for an issuer's internal burden hours.

• Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Acting Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7–06–19. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7–06–19 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed amendments. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[322] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

• An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [323] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[324] to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with Section 603 of the RFA. It relates to the proposed amendments to the accelerated filer and large accelerated filer definitions in Rule 12b–2 under the Exchange Act.

A. Reasons for, and Objectives of, the Proposing Action

The purpose of the proposed amendments to the accelerated filer and large accelerated filer definitions in Rule 12b–2 is to promote capital formation by more appropriately tailoring the types of issuers that are included in the category of accelerated filers and revising the transition thresholds for accelerated and large accelerated filers. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Sections I and II above.

B. Legal Basis

We are proposing the rule and form amendments contained in this release under the authority set forth in Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act, as amended.

C. Small Entities Subject to the Proposed Rules

The proposed changes would affect some registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [325] For purposes of the RFA, under our rules, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[326]

We estimate that there are 1,171 issuers that file with the Commission, other than investment companies, which may be considered small entities and are potentially subject to the proposed amendments.[327] Investment companies, which include BDCs, qualify as small entities if, together with other investment companies in the same group of related investment companies, they have net assets of $50 million or less as of the end of their most recent fiscal year.[328] Commission staff estimates that, as of June 2018, approximately 19 BDCs are small entities.[329] We believe it is likely that virtually all issuers that would be considered small businesses or small organizations, as defined in our rules, are already non-accelerated filers and would continue to be encompassed within that category if the proposed amendments are adopted. To the extent any such issuers are not already non-accelerated filers, we believe it is likely that the proposed amendments would capture those entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would reduce the number of accelerated filers, which would reduce the compliance burden for those issuers, some of which may be small entities, because they would no longer have to satisfy the ICFR auditor attestation requirement, comply with accelerated deadlines for filing their Exchange Act periodic reports, provide disclosure regarding the availability of their filings, or provide disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports. Compliance with certain rules affected by the proposed amendments would require the use of professional skills, including accounting and legal skills. The proposed amendments are discussed in detail in Sections I and II above. We discuss the economic effect including the estimated costs and burdens, of the proposed amendments on all registrants, including small entities, in Section III above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

[322] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[323] 5 U.S.C. 601 *et seq.*

[324] 5 U.S.C. 553.

[325] 5 U.S.C. 601(6).

[326] *See* 17 CFR 240.0–10(a) under the Exchange Act.

[327] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of Form 10–K, 20–F and 40–F, or amendments, filed during the calendar year of January 1, 2018 to December 31, 2018. This analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[328] 17 CFR 270.0–10(a).

[329] These estimates are based on staff analysis of Morningstar data and data submitted by investment company registrants in forms filed on EDGAR between April 1, 2018 and June 30, 2018.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the amendments;
- Using performance rather than design standards; and
- Exempting small entities from coverage of all or part of the amendments.

We do not believe that establishing different compliance or reporting obligations in conjunction with the proposed amendments is necessary. The proposed amendments would not impose any significant new compliance obligations. In fact, the proposed amendments would reduce the compliance obligations of affected issuers by increasing the number of issuers, including small entities, that are subject to the different, less burdensome, compliance and reporting obligations for non-accelerated filers. Similarly, because the proposed amendments would reduce the burdens for these issuers, we do not believe it is appropriate to exempt small entities from all or part of the proposed amendments.

We believe that some of the issuers that would become eligible to be non-accelerated filers if the proposed amendments are adopted may be smaller entities. Therefore, to the extent that any small entities would become newly eligible for non-accelerated filer status under the proposed amendments, their compliance and reporting requirements would be further simplified. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for small entities, and the proposed amendments would not alter these existing accommodations.

Finally, with respect to the use of performance rather than design standards, because the proposed amendments are not expected to have any significant adverse effect on small entities (and may, in fact, relieve burdens for some such entities), we do not believe it is necessary to use performance standards in connection with this rulemaking.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- How the proposed rule and form amendments can achieve their objective while lowering the burden on small entities;
- The number of small entities that may be affected by the proposed rule and form amendments;
- The existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the effects of the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

VII. Statutory Authority and Text of Proposed Rule Amendments

The rule amendments described in this release are being proposed pursuant to Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 240.12b–2 by, in the definition of ''Accelerated filer and large accelerated filer,'':

■ a. Removing ''.'' at the end of paragraph (1)(iii) and adding in its place ''; and'';

■ b. Adding paragraph (1)(iv);

■ c. Removing ''.'' at the end of paragraph (2)(iii) and adding in its place ''; and'';

■ d. Adding paragraph (2)(iv); and

■ e. Revising paragraphs (3)(ii) and (3)(iii).

The addition and revisions read as follows:

§ 240.12b–2 Definitions.

* * * * *

Accelerated Filer and large accelerated filer— (1) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable.

(2) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable.

(3) * * *

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless: the issuer determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates was less than $60 million, as of the last business day of the issuer's most recently completed second fiscal quarter; or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable. An issuer that makes either of these determinations becomes a non-accelerated filer. The issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

(iii) Once an issuer becomes a large accelerated filer, it will remain a large accelerated filer unless: it determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates (''aggregate worldwide market value'') was less than $560 million, as of the last business day of the issuer's most recently completed second fiscal quarter or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable. If the issuer's aggregate worldwide market value was $60 million or more, but less than $560

million, as of the last business day of the issuer's most recently completed second fiscal quarter, and it is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable, it becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than $60 million, as of the last business day of the issuer's most recently completed second fiscal quarter, or it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, it becomes a non-accelerated filer. An issuer will not become a large accelerated filer again unless it subsequently meets the conditions in paragraph (2) of this definition.

* * * * *

By the Commission.

May 9, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–09932 Filed 5–28–19; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island, Beaufort Sea, Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 180627584–9388–01]

RIN 0648–BI00

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island, Beaufort Sea, Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Hilcorp Alaska (Hilcorp) for authorization to take marine mammals incidental to construction and operation of the Liberty Drilling and Production Island (LDPI), over the course of five years. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than June 28, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0053, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0053* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of Hilcorp's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

NMFS received an application from Hilcorp requesting five-year regulations and authorization to incidentally take multiple species of marine mammals in Foggy Island Bay, Beaufort Sea, by Level A harassment (non-serious injury) and Level B harassment (behavioral disturbance), incidental to construction and operation of the LDPI and associated infrastructure. Please see ''Background'' below for definitions of harassment. In addition, a limited unintentional take involving the mortality or serious injury of no more than two ringed seals (*Phoca hispida*) would be authorized to occur during annual ice road construction and maintenance. This proposed rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to Hilcorp's activities related to construction and operation of the LDPI.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the ''Proposed Mitigation'' section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule Hilcorp would be required to implement. These measures include:

- Use of soft start during impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power;
- Implementation of shutdowns of construction activities under certain circumstances to minimize harassment, including injury;
- Prohibition on impact pile driving during the fall Cross Island bowhead whale hunt and seasonal drilling restrictions to minimize impacts to marine mammals and subsistence users;
- Implementation of best management practices to avoid and minimize ice seal and habitat disturbance during ice road construction, maintenance, and use;
- Use of marine mammal and acoustic monitoring to detect marine mammals and verify predicted sound fields;
- Coordination with subsistence users and adherence to a Plan of Cooperation (POC); and
- Limitation on vessel speeds and transit areas, where appropriate.

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 is provided to the public for review. Under the MMPA, ''take'' is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. ''Harassment'' is statutorily defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment) or 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 but which does not have the potential to injure a marine mammal or marine mammal stock in the wild (Level B harassment).

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.

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 evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

On August 23, 2018, the Bureau of Ocean Energy Management (BOEM) released a Final Environmental Impact Statement (EIS) analyzing the possible environmental impacts of Hilcorp's proposed Liberty development and production plan (DPP). BOEM's Draft EIS was made available for public comment from August 18, 2017 through December 8, 2017. The final EIS may be found at *https://www.boem.gov/hilcorp-liberty/*. NMFS is a cooperating agency on the EIS. Accordingly, NMFS plans to adopt the EIS, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the rule. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the regulations request.

Summary of Request

On August 2, 2017, Hilcorp petitioned NMFS for rulemaking under Section 101(a)(5)(A) of the MMPA to authorize the take of six species of marine mammals incidental to construction and operation of the proposed LDPI in Foggy Island Bay, Alaska. On April 26, 2018, Hilcorp submitted a revised petition which NMFS deemed adequate and complete. On May 9, 2018, we published a notice of receipt of Hilcorp's petition in the **Federal Register**, requesting comments and information related to the request for thirty days (83 FR 21276). We received comments from the Center for Biological Diversity and 15,843 citizens opposing issuance of the requested regulations and LOA. We also received comments from the Alaska Eskimo Whaling Commission (AEWC) who recommended we include subsistence related mitigation and coordination requirements in the final rule. The comments and information received were considered in development of this proposed rule and are available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* More recently, Hilcorp provided subsequent additional information, including details on a previously undescribed component of the project (installation of foundation piles in the interior of the LDPI), and revised marine mammal density and estimate take numbers on February 4, 2019. Hilcorp also updated their proposed Marine Mammal Mitigation and Monitoring Plan (4MP) on January 29, 2019.

To extract oil and gas in the Liberty Oil Field, Hilcorp is proposing to construct a 9.3 acre artificial island (the LDPI) in 19 feet (ft) (5.8 meters (m)) of water in Foggy Island Bay, approximately 5 miles (mi) (8 kilometers (km)) north of the Kadleroshilik River and install supporting infrastructure (*e.g.,* ice roads, pipeline). Ice roads would be constructed annually and begin December 2020. Island construction, which requires impact and vibratory pile driving, is proposed to commence and be completed in 2021. Pile driving would primarily occur during ice-covered season (only ice seals are present during this time period); however, up to two weeks of pile driving may occur during the open-water season. Pipeline installation is anticipated to occur in 2022. Drilling and production is proposed to occur from 2022 through 2025.

Hilcorp requests, and NMFS is proposing to authorize, the take, by Level A harassment and Level B harassment, of bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus),* beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*), and spotted seals (*Phoca largha*) incidental to LDPI construction and operation activities (*e.g.,* pile driving, ice road and island construction). Hilcorp also requested, and NMFS is proposing to authorize, mortality and serious injury of two ringed seals incidental to annual ice road construction over a 5-year period. The proposed regulations and LOA would be valid for five years from December 1, 2020, through November 30, 2025.

Description of the Specified Activity

Overview

Hilcorp is proposing to construct and operate the LDPI, a self-contained offshore drilling and production facility located on an artificial gravel island. Infrastructure and facilities necessary to drill wells and process and export approximately 60,000 to 70,000 barrels of oil per day to shore would be installed on the island. To transport oil, a pipeline from the island would be installed, tying into the existing Bandami pipeline located on shore between the Sagavanirktok and Kadleroshilik Rivers on Alaska's North Slope. To access the island and move vehicles and equipment, ice roads would be constructed annually. All island construction and pipeline installation would occur during winter months as much as possible; however, pile driving and slope protection could occur during the open water season. Drilling and production, once begun, would occur year round. After island and pipeline construction, Hilcorp would commence and continue drilling and production for approximately 20 to 25 years at which time the island would be decommissioned. The proposed regulations and LOA would cover the incidental take of marine mammals during LDPI construction and operation for the first five years of work. Thereafter, data collected during these five years (*e.g.,* acoustic monitoring during drilling, ice road marine mammal monitoring) would determine

if future incidental take authorizations are warranted for continuing operations.

Dates and Duration

The proposed regulations would be valid for a period of five years from December 1, 2020, through November 30, 2025. Ice road construction and pipeline installation would be limited to winter months. Island construction would be conducted primarily during winter months; however, given construction schedules are subject to delays for multiple reasons. Hilcorp anticipates, at most, up to two weeks of open-water pile driving may be required in the first year to complete any pile driving not finished during the winter. Other work such as island slope armoring may also occur during open-water conditions. All island construction would commence and is expected to be completed in the first year of the proposed regulations (December 2020 through November 2021). Pipeline installation would occur in year 2 of the proposed regulations (December 2021 through November 2022), while drilling and production would begin in year 3 and continue through the life of the proposed regulations. Ice road construction and maintenance activities would occur each winter.

Specified Geographical Region

The Liberty field is located in Federal waters of Foggy Island Bay, Beaufort Sea about 8.9 km (5.5 mi) offshore in 6.1 m (20 ft) of water and approximately 8 to 13 km (5 to 8 mi) east of the existing Endicott Satellite Drilling Island (SDI) and approximately 32 km (20 mi) east of Prudhoe Bay. Hilcorp would construct the Liberty project on three leases, OCS–Y–1650, OCS–Y–1886, and OCS–Y–1585. The proposed LDPI would be constructed in 19 ft (5.8 m) of water about 5 mi (8 km) offshore in Foggy Island Bay. The LDPI and all associated infrastructure (*e.g.,* ice roads) are located inside the McClure barrier island group which separates Foggy Island Bay from the Beaufort Sea (Figure 1).

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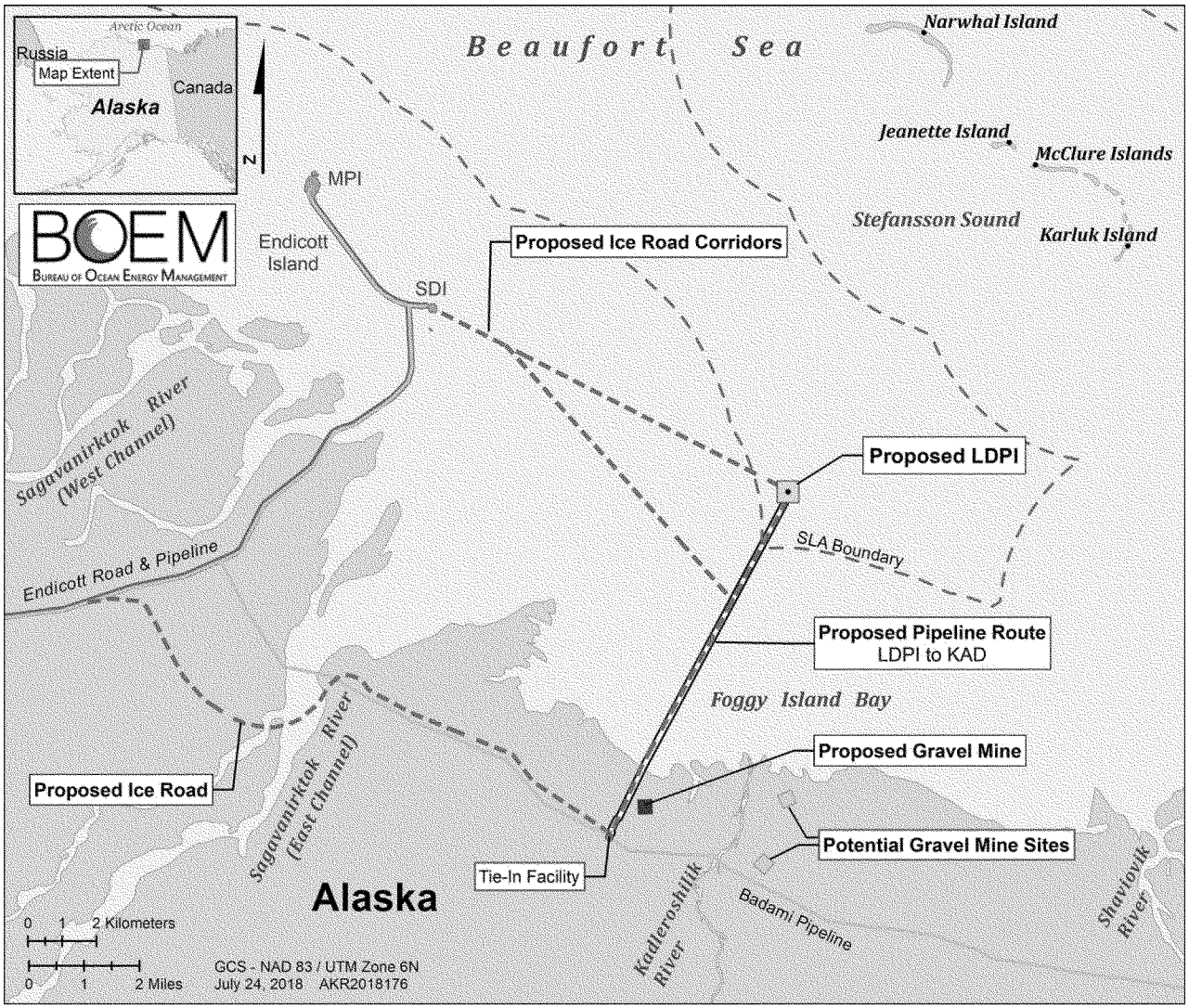

Figure 1. Location of the LDPI and Associated Infrastructure.

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Detailed Description of Activities

The Liberty Prospect is located 8.85 km offshore in about 6 m of water, inside the Beaufort Sea's barrier islands. Hilcorp, as the Liberty operator, is proposing to develop the Liberty Oil Field reservoir, located on the Outer Continental Shelf (OCS), in Foggy Island Bay, Beaufort Sea, Alaska. The Liberty reservoir is the largest delineated but undeveloped light oil reservoir on the North Slope. It is projected to deliver a peak production rate of between 60,000 and 70,000 barrels of oil per day within two years of initial production. Total recovery over an estimated field life of 15 to 20 years is predicted to be in the range of 80 to 150 million stock tank barrels of oil. The Liberty Oil Field leases were previously owned by BP Exploration Alaska, Inc. (BPXA). In April 2014, BPXA announced the sale of several North Slope assets to Hilcorp including the area where the proposed LDPI would be constructed and other existing oil production islands (Northstar, Endicott, Milne Point). The Liberty Project has many similarities to previous oil and gas islands constructed on the North Slope, including Endicott, Northstar and Oooguruk.

The proposed LDPI project includes development of a mine-site to supply gravel for the construction of the LDPI, construction of the island and annual ice roads, installation of an undersea pipeline that reaches shore from the LDPI and then connects to the existing above-ground Badami pipeline, drilling, production and operation (for simplicity, hence forward we refer to both production and operation as ''production''). The mine site is located inland of marine mammal habitat over which NMFS has jurisdiction; therefore, its development will not be discussed further in this proposed rule as no impacts to marine mammals under NMFS jurisdiction would be affected by this project component. Here, we discuss those activities that have the potential to take marine mammals: Ice road construction and maintenance, island construction (pile driving and slope armoring), pipeline installation, drilling and production. We also describe auxiliary activities, including vessel and aircraft transportation. A schedule of all phases on the project and summary of equipment and activities involved are included in Table 1.

TABLE 1—LDPI PROJECT COMPONENTS, SCHEDULE, AND ASSOCIATED EQUIPMENT

Project component	Regulation year	Season	Equipment and activity
Ice road construction, use, and maintenance.	1–5	Ice-covered	Grader, ice auger, trucks (flood road, haul gravel, general transit, maintenance).
Island construction	*1	Ice-covered, open water	Impact and vibratory pile and pipe driving, backhoe (digging), excavator (slope shaping, armor installation, ditchwitch (sawing ice).
Pipeline installation	2	Ice-covered	Ditchwitch (sawing ice), backhoe (digging), trucks.
Drilling and production	3–5	Ice-covered, open water	Drill rig, land-based equipment on island (*e.g.,* generators).
Marine vessel and aircraft support.	1–5	Open-water, ice-covered (helicopter only).	Barge, tugs, crew boats, helicopter.
Emergency and oil response training.	1–5	Ice-covered, open water	Vessels, hovercrafts, all-terrain vehicles, snow machines, etc.

*Hilcorp has indicated a goal to complete all LDPI construction in the first year the regulations would be valid; however, they may need to install foundation piles in year 2.

Ice Road and Ice Pad Construction and Maintenance

Hilcorp will construct ice roads and perform maintenance, as necessary. Ice roads are a route across sea ice created by clearing and grading snow then pumping seawater from holes drilled through the floating ice. Some roads may use grounded ice. Hilcorp would clear away snow using a tractor, bulldozer, or similar piece of equipment then pump seawater from holes drilled through floating ice, and then flood the ice road. The ice roads will generally be constructed by pumper units equipped with an ice auger to drill holes in the sea ice and then pump water from under the ice to flood the surface of the ice. The ice augers and pumping units will continue to move along the ice road alignment to flood the entire alignment, returning to a previous area as soon as the flooded water has frozen. The ice road will be maintained and kept clean of gravel and other solids. Freshwater can be sprayed onto the road surface to form a cap over the main road structure for the top layer or to repair any cracks.

Ice roads will be used for onshore and offshore access, installing the pipeline, hauling gravel used to construct the island, moving equipment on/off island, personnel and supply transit, etc. Ice roads are best constructed when weather is -20 degrees Fahrenheit (F) to -30 degrees F, but temperatures below 0 degree F are considered adequate for ice road construction. Ice road construction can typically be initiated in mid- to late-December and roads maintained until mid-May. At the end of the season, ice roads will be barricaded by snow berm and/or slotted at the entrance to prevent access and allowed to melt naturally. Figure 1 shows the locations of the proposed ice roads.

- Ice road # 1 will extend approximately 11.3 km (7 mi) over shorefast sea ice from the Endicott SDI to the LDPI (the SDI to LDPI ice road). It will be approximately 37 m wide (120 ft) with driving lane of approximately 12 m (40 ft). It would cover approximately 160 acres of sea ice.
- Ice road # 2 (approximately 11.3 km (7 mi)) will connect the LDPI to the proposed Kadleroshilik River gravel mine site and then will continue to the juncture with the Badami ice road (which is ice road # 4). It will be approximately 15 m (50 ft) wide.
- Ice road # 3 (approximately 9.6 km [6 mi], termed the ''Midpoint Access Road'') will intersect the SDI to LDPI ice road and the ice road between the LDPI and the mine site. It will be approximately 12 m (40 ft) wide.
- Ice road # 4 (approximately 19.3 km (12 mi)), located completely onshore, will parallel the Badami pipeline and connect the mine site with the Endicott road.

All four ice roads would be constructed for the first three years to support pipeline installation and transportation from existing North Slope roads to the proposed gravel mine site, and from the mine site to the proposed LDPI location in the Beaufort Sea. After year 3, only ice road #1 would be constructed to allow additional materials and equipment to be

mobilized to support LDPI, pipeline, and facility construction activities as all island construction and pipeline installation should be complete by year 3. Winter sea ice road/trail construction will begin as early as possible (typically December 1 through mid-February). It is anticipated that all ice road construction activities will be initiated prior to March 1, before the time when female ringed seals establish birth lairs.

In addition to the ice roads, three ice pads are proposed to support construction activities (year 2 and 3). These would be used to support LDPI, pipeline, (including pipe stringing and two stockpile/disposal areas) and facilities construction. A fourth staging area ice pad (approximately 350 feet by 700 feet) would be built on the sea ice on the west side of the LDPI during production well drilling operations.

Other on-ice activities occurring prior to March 1 could also include spill training exercises, pipeline surveys, snow clearing, and work conducted by other snow vehicles such as a Pisten Bully, snow machine, or rollagon. Prior to March 1, these activities could occur outside of the delineated ice road/trail and shoulder areas.

LDPI Construction

The LDPI will include a self-contained offshore drilling and production facility located on an artificial gravel island with a subsea pipeline to shore. The LDPI will be located approximately 8 kilometers (km) or 5 miles (mi) offshore in Foggy Island Bay and 11.7 km (7.3 mi) southeast of the existing SDI on the Endicott causeway (see Figure 1). The LDPI will be constructed of reinforced gravel in 5.8 meters (m) (19 feet (ft)) of water and have a working surface of approximately 3.8 hectares (ha) (9.3 acres (ac)). A steel sheet pile wall would surround the island to stabilize the placed gravel and the island would include slope protection bench, dock and ice road access and a seawater intake area (Figure 2).

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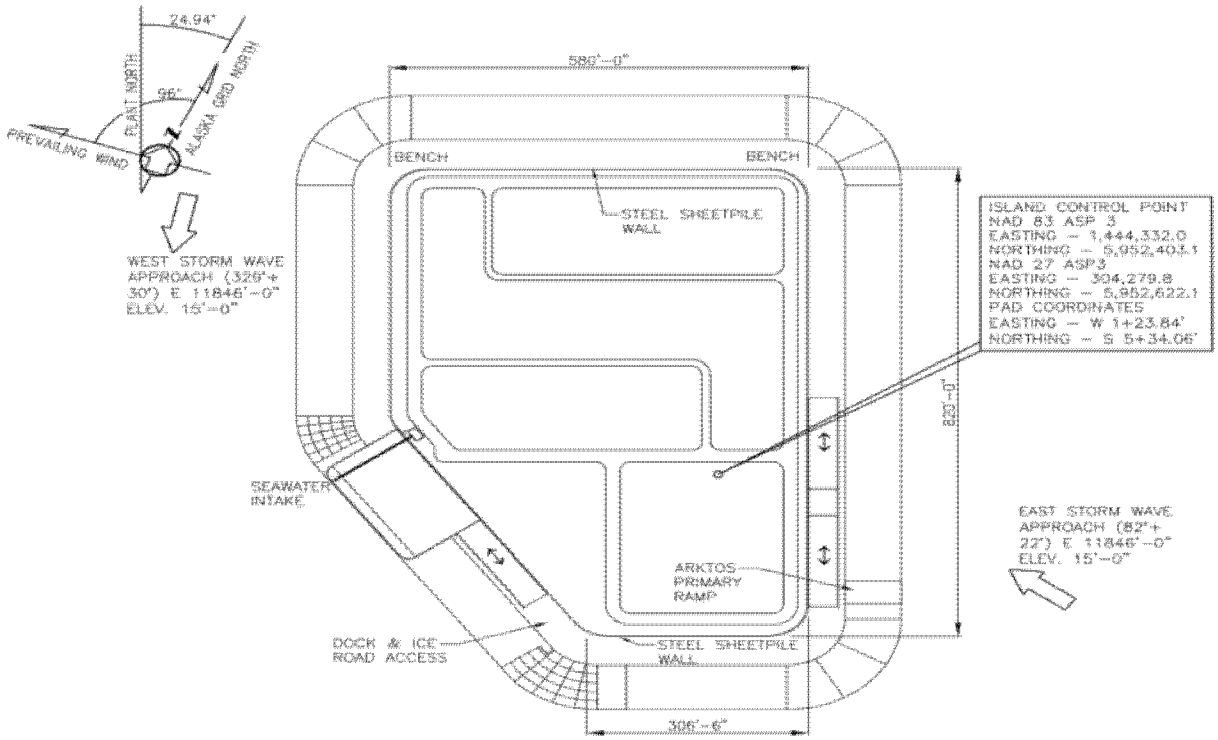

Figure 2. Proposed Liberty Development and Production Island.

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Hilcorp would begin constructing the LDPI during the winter immediately following construction of the ice road from the mine site to the island location. Sections of sea ice at the island's location would be cut using a ditchwitch and removed. A backhoe and support trucks using the ice road would move ice away. Once the ice is removed, gravel will be poured through the water column to the sea floor, building the island structure from the bottom up. A conical pile of gravel (hauled in from trucks from the mine site using the ice road) will form on the sea floor until it reaches the surface of the ice. Gravel hauling over the ice road to the LDPI construction site is estimated to continue for 50 to 70 days, and conclude mid-April or earlier depending on road conditions. The construction would continue with a sequence of removing additional ice and pouring gravel until the surface size is achieved. Following gravel placement, slope armoring and protection installation would occur. Using island-based equipment (*e.g.,* backhoe, bucket-dredge) and divers, Hilcorp would create a slope protection profile consisting of a 60-ft (18.3 m) wide bench covered with a linked concrete mat that

extends from a sheet pile wall surrounding the island to slightly above mean low low water (MLLW) (Figure 3). The linked concrete mat requires a high strength, yet highly permeable woven polyester fabric under layer to contain the gravel island fill. The filter fabric panels will be overlapped and tied together side-by-side (requiring diving operations) to prevent the panels from separating and exposing the underlying gravel fill. Because fabric is overlapped and tied together, no slope protection debris would enter the water column should it be damaged. Above the fabric under layer, a robust geo-grid will be placed as an abrasion guard to prevent damage to the fabric by the linked mat armor. The concrete mat system would continue another at a 3:1 slope another 86.5 ft into the water, terminating at a depth of −19 ft (−5.8 m). In total, from the sheet pile wall, the bench and concrete mat would extend 146.5 ft. Island slope protection is required to assure the integrity of the gravel island by protecting it from the erosive forces of waves, ice ride-up, and currents. A detailed inspection of the island slope protection system will be conducted annually during the open-water season to document changes in the condition of the island slope protection system that have occurred since the previous year's inspection. Any damaged material would be removed. Above-water activities will consist of a visual inspection of the dock and sheet pile enclosure, and documenting the condition of the island bench and ramps. The below-water slopes will be inspected by divers or if water clarity allows, remotely by underwater cameras contracted separately by Hilcorp. The results of the below water inspection will be recorded for repair if needed. No vessels will be required. Multi-beam bathymetry and side-scan sonar imagery of the below-water slopes and adjacent sea bottom will be acquired using a bathymetry vessel. The sidescan sonar would operate at a frequency between 200–400 kilohertz (kHz). The single-beam echosounder would operate at a frequency of about 210 kHz.

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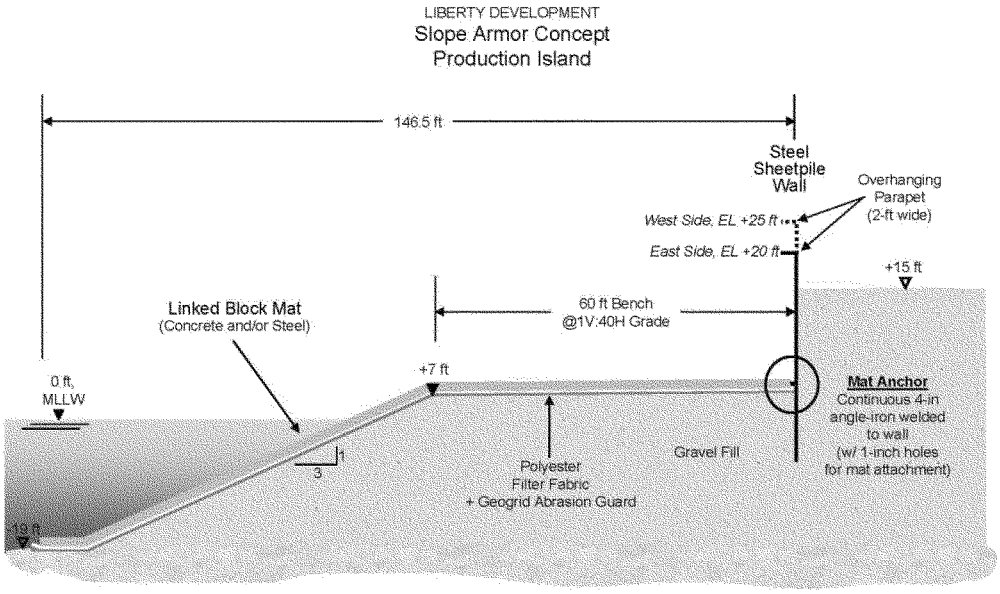

Figure 3. LDPI Slope Protection.

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Once the slope protection is in place, Hilcorp would install the sheet pile wall around the perimeter of the island using vibratory and, if necessary, impact hammers. Hilcorp anticipates driving up to 20 piles per day to a depth of 25 ft. A vibratory hammer would be used first followed by an impact hammer to ''proof'' the pile. Hilcorp anticipates each pile needing 100 hammer strikes over approximately 2 minutes of impact driving to obtain final desired depth for each sheet pile. Per day, this equates to a maximum of 40 minutes and 2,000 strikes of impact hammering per day. For vibratory driving, pile penetration speed can vary depending on ground conditions, but a minimum sheet pile penetration speed is 20 inches (0.5 m) per minute to avoid damage to pile or hammer (NASSPA 2005). For this project, the anticipated duration is based on a preferred penetration speed greater than 40 inches (1 m) per minute, resulting in 7.5 minutes to drive each pile. Given the high storm surge and larger waves that are expected to arrive at the LDPI site from the west and northwest, the wall will be higher on the west side than on the east side. At the top of the sheet-pile wall, overhanging steel ''parapet'' will be installed to prevent wave passage over the wall.

Within the interior of the island, 16 steel conductor pipes would be driven to a depth of 160 ft (49 m) to provide the initial stable structural foundation for each oil well. They would be set in a well row in the middle of the island. Depending on the substrate the conductor pipes would be driven by impact or vibratory methods or both. During construction of the nearby Northstar Island (located in deeper water), it took 5 to 8.5 hours to drive one conductor pipe (Blackwell *et al.,* 2004). For the Liberty LDPI, Hilcorp anticipates it would take two hours of active pile driving per day to install a conductor pipe given the 5 to 8.5 hour timeframe at Northstar includes pauses in pile driving and occurred in deeper water requiring deeper pile depths. In addition, approximately 700 to 1,000 foundation piles may also be installed within the interior of the island should engineering determine they are necessary for island support.

Pipeline Installation

Hilcorp would install a pipe-in-pipe subsea pipeline consisting of a 12-in diameter inner pipe and a 16-in diameter outer pipe to transport oil from the LDPI to the existing Bandami pipeline. Pipeline construction is planned for the winter after the island is constructed. A schematic of the pipeline can be found in Figure 2–3 of BOEM's Final EIS available at *https://www.boem.gov/Hilcorp-Liberty/*. The pipeline will extend from the LDPI, across Foggy Island Bay, and terminate onshore at the existing Badami Pipeline tie-in location. For the marine segment, construction will progress from shallower water to deeper water with multiple construction spreads.

To install the pipeline, a trench will be excavated using ice-road based long reach excavators with pontoon tracks. The pipeline bundle will be lowered into the trench using side booms to control its vertical and horizontal position, and the trench will be backfilled by excavators using excavated trench spoils and select backfill. Hilcorp intends to place all material back in the trench slot. All work will be done from ice roads using conventional excavation and dirt-moving construction equipment. The target trench depth is 9 to 11 ft (2.7 to 3.4 m) with a proposed maximum depth of cover of approximately 7 ft (2.1 m). The pipeline will be approximately 5.6 mi (9 km) long. Hydro-testing (pressure testing using sea water) of the entire pipeline will be completed prior to commissioning.

Drilling and Production

The final drill rig has yet to be chosen by Hilcorp but has been narrowed to two options and will accommodate drilling of 16 wells. The first option is the use of an existing platform-style drilling unit that Hilcorp owns and operates in the Cook Inlet. Designated as Rig 428, the rig has been used recently and is well suited in terms of depth and horsepower rating to drill the wells at Liberty. A second option that is being investigated is a new build drilling unit that would be built to not only drill Liberty development wells, but would be more portable and more adaptable to other applications on the North Slope. Regardless of drill rig type, the well row arrangement on the island is designed to accommodate up to 16 wells. We note that while Hilcorp is proposing a 16 well design, only 10 wells would be drilled. The 6 additional well slots would be available as backups or for potential in-fill drilling if needed during the project life.

Process facilities on the island will separate crude oil from produced water and gas. Gas and water will be injected into the reservoir to provide pressure support and increase recovery from the field. A single-phase subsea pipe-in-pipe pipeline will transport sales-quality crude from the LDPI to shore, where an aboveground pipeline will transport crude to the existing Badami pipeline. From there, crude will be transported to the Endicott Sales Oil Pipeline, which ties into Pump Station 1 of the TransAlaska Pipeline System (TAPS) for eventual delivery to a refinery.

Description of Marine Mammals in the Area of the Specified Activity

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' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.nmfs.noaa.gov/pr/species/mammals/*). Additional information may be found in BOEM's Final EIS for the project which is available online at *https://www.boem.gov/Hilcorp-Liberty/*.

Table 2 lists all species with expected potential for occurrence in Foggy Island Bay and surrounding Beaufort Sea and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2017 SAR for Alaska (Muto *et al.,* 2018). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.,* 2018).

TABLE 2—MARINE MAMMALS WITH EXPECTED POTENTIAL OCCURRENCE IN BEAUFORT SEA, ALASKA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance) (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-;N	20,990 (0.05, 20,125, 2011).	624	132
Family Balaenidae						
Bowhead whale	*Balaena mysticetus*	Western Arctic	E/D; Y	16,820 (0.052, 16,100, 2011).	161	46
Humpback whale	*Megaptera novaeangliae*	Central North Pacific Stock	E/D; Y	10,103 (0.3, 7,891, 2006)	83	26
Minke whale		Alaska	-;N	unk	undet	0
Fin whale		Northeast Pacific	E/D; Y	3,168 (0.26, 2,554, 2013) [6].	5.1	0.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-; N	39,258 (0.229, N/A, 1992).	Und	139
		Eastern Chukchi	-; N	20,752 (0.70, 12,194, 2012).	244	67
Killer whale	*Orcinus orcas*	Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	-;N	587 (n/a, 587, 2012)	5.9	0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumatopias jubatus*	Eastern U.S	-; N	41,638 (-, 41,638, 2015)	2,498	108
		Western U.S	E/D;Y	53,303 (-, 53,303, 2016)	320	241
Family Phocidae (earless seals)						
Ringed Seal	*Pusa hispida*	Alaska	T, D; Y	170,000 (-, 170,000, 2012) [4].	Und	1,054
Bearded seal	*Erignathus barbatus*	Alaska	T, D; Y	299,174 (-, 273,676) [5]	Und	391
Spotted seal	*Phoca largha*	Alaska		423,625 (-, 423,237, 2013).	12,697	329
Ribbon seal	*Histriophoca fasciata*	Alaska		184,000 (-, 163,086, 2013).	9,785	3.9

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

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

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

[4] The population provided here was derived using a using a very limited sub-sample of the data collected from the U.S. portion of the Bering Sea in 2012 (Conn *et al.,* 2014). Thus, the actual number of ringed seals in the U.S. sector of the Bering Sea is likely much higher, perhaps by a factor of two or more (Muto *et al.,* 2018). Reliable estimates of abundance are not available for the Chukchi and Beaufort seas (Muto *et al.,* 2018).

[5] 5. In spring of 2012 and 2013, surveys were conducted in the Bering Sea and Sea of Okhotsk; these data do not include seals in the Chukchi and Beaufort Seas at the time of the survey.

[6] N_{BEST}, N_{MIN}, and PBR have been calculated for this stock; however, important caveats exist. See Stock Assessment Report text for details.

Note—*Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the Beaufort Sea are included in Table 2. However, the temporal and/or spatial occurrence of minke, fin, humpback whales, killer whales, narwhals, harbor porpoises, and ribbon seals are such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species, regularly occur in the Chukchi Sea but not as commonly in the Beaufort Sea. Narwhals, Steller sea lions, and hooded seals are considered extralimital to the proposed action area These species could occur in the Beaufort Sea, but are either uncommon or extralimital east of Barrow (located in the Foggy Island Bay area and surveys within the Bay have revealed zero sightings).

In addition, the polar bear may be found in Foggy Island Bay. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

On October 11, 2016, NOAA released the Final Environmental Impact Statement (FEIS) for the Effects of Oil and Gas Activities in the Arctic Ocean (81 FR 72780, October 21, 2016) regarding geological and geophysical (*i.e.,* seismic) activities, ancillary activities, and exploratory drilling. The Final EIS may be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/environmental-impact-statement-eis-effects-oil-and-gas-activities.* Although no seismic activities are proposed by Hilcorp, the EIS contains detailed

information on marine mammal species proposed to be potentially taken by Hilcorp's specified activities. More recently, BOEM released a final EIS on the Liberty Project. We incorporate by reference the information on the species proposed to be potentially taken by Hilcorp's specified activities from these documents and provide a summary and any relevant updates on species status here.

Bowhead Whale

The only bowhead whale stock found within U.S. waters is the Western Arctic stock, also known as the Bering-Chukchi-Beaufort stock (Rugh *et al.,* 2003) or Bering Sea stock (Burns *et al.,* 1993). The majority of the Western Arctic stock migrates annually from wintering areas (December to March) in the northern Bering Sea, through the Chukchi Sea in the spring (April through May), to the eastern Beaufort Sea where they spend much of the summer (June through early to mid-October) before returning again to the Bering Sea in the fall (September through December) to overwinter (Braham *et al.,* 1980, Moore and Reeves 1993, Quakenbush *et al.,* 2010a, Citta *et al.,* 2015). Some bowhead whales are found in the western Beaufort, Chukchi, and Bering seas in summer, and these are thought to be a part of the expanding Western Arctic stock (Rugh *et al.,* 2003; Clarke *et al.,* 2013, 2014, 2015; Citta *et al.,* 2015). The most recent population parameters (*e.g.,* abundance, PBR) of western Arctic bowhead whales are provided in Table 2.

Bowhead whale distribution in the Beaufort Sea during summer-fall has been studied by aerial surveys through the Bowhead Whale Aerial Survey Project (BWASP). This project was funded or contracted by the Minerals Management Service (MMS)/Bureau of Ocean Energy Management (BOEM) and Bureau of Land Management (BLM) annually from 1979 to 2010. The focus of the BWASP aerial surveys was the autumn migration of bowhead whales through the Alaskan Beaufort Sea, although data were collected on all marine mammals sighted. The NMFS National Marine Mammal Laboratory (NMML) began coordinating BWASP in 2007, with funding from MMS. In 2011, an Interagency Agreement between the BOEM and NMML combined BWASP with COMIDA under the auspices of a single survey called Aerial Surveys of Arctic Marine Mammals (ASAMM) (Clarke *et al.,* 2012); both studies are funded by BOEM. In September to mid-October bowheads begin their western migration out of the Canadian Beaufort Sea to the Chukchi Sea (Figure 3.2–10). Most westward travel across the Beaufort Sea by tagged whales was over the shelf, within 100 km (62 mi) of shore, although a few whales traveled farther offshore (Quakenbush *et al.,* 2012).

During winter and spring, bowhead whales are closely associated with sea ice (Moore and Reeves 1993, Quakenbush *et al.,* 2010a, Citta *et al.,* 2015). The bowhead whale spring migration follows fractures in the sea ice around the coast of Alaska, generally in the shear zone between the shorefast ice and the mobile pack ice. During summer, most of the population is in relatively ice-free waters in the southeastern Beaufort Sea (Citta *et al.,* 2015), an area often exposed to industrial activity related to petroleum exploration (*e.g.,* Richardson *et al.,* 1987, Davies, 1997). Summer aerial surveys conducted in the western Beaufort Sea during July and August of 2012–2014 have had relatively high sighting rates of bowhead whales, including cows with calves and feeding animals (Clarke *et al.,* 2013, 2014, 2015). During the autumn migration through the Beaufort Sea, bowhead whales generally select shelf waters (Citta *et al.,* 2015). In winter in the Bering Sea, bowhead whales often use areas with ~100 percent sea-ice cover, even when polynyas are available (Quakenbush *et al.,* 2010a, Citta *et al.,* 2015).

From 2006 through 2014, median distance of bowhead whales from shore was 23.6 km (14.7 mi) in the East Region and 24.2 km (15.0 mi) in the West Region during previous low-ice years, with annual median distances ranging from as close as 6.3 km (3.9 mi) in 2009 to 37.6 km (23.4 mi) in 2013 (Clarke *et al.,* 2015b). Median depth of sightings during previous low-ice years was 39 m (128 ft) in the East Region and 21 m (69 ft) in the West Region; in 2014, median depth of on-transect sightings was 20 m (66 ft) and 19 m (62 ft), respectively (Clarke *et al.,* 2015b). In September and October 2014, bowhead whales in the East Region of the study area were sighted in shallower water and closer to shore than in previous years of light sea ice cover; in the West Region, bowhead sightings in fall 2014 were in shallower water than in previous light ice years, but the distance from shore did not differ (Clarke *et al.,* 2015b). Behaviors included milling, swimming, and feeding, to a lesser degree. Highest numbers of sightings were in the central Beaufort Sea and east of Point Barrow. Overall, the most shoreward edge of the bowhead migratory corridor for bowhead extends approximately 40 km (25 mi) north from the barrier islands, which are located approximately 7 km (4 mi) north of Liberty Project. The closest approach of a tagged whale occurred in August 2016 when it came within 16 km of the proposed LDPI (Quakenbush, 2018).

Historically, there have been few spring, summer, or autumn observations of bowheads in larger bays such as Camden, Prudhoe, and Harrison Bays, although some groups or individuals have occasionally been observed feeding around the periphery of or, less commonly, inside the bays as migration demands and feeding opportunities permit. Observations indicate that juvenile, sub-adult, and cow-calf pairs of bowheads are the individuals most frequently observed in bays and nearshore areas of the Beaufort, while more competitive whales are found in the Canadian Beaufort and Barrow Canyon, as well as deeper offshore waters (Clarke *et al.,* 2011b, 2011c, 2011d, 2012, 2013, 2014, 2015b; Koski and Miller, 2009; Quakenbush *et al.,* 2010).

Clarke *et al.* (2015) evaluated biologically important areas (BIAs) for bowheads in the U.S. Arctic region and identified nine BIAs. The spring (April-May) migratory corridor BIA for bowheads is far offshore of the LDPI but within the transit portion of the action area, while the fall (September-October) migratory corridor BIA (western Beaufort on and north of the shelf) for bowheads is further inshore and closer to the LDPI. Clarke *et al.* (2015) also identified four BIAs for bowheads that are important for reproduction and encompassed areas where the majority of bowhead whales identified as calves were observed each season; none of these reproductive BIAs overlap with the LDPI, but may be encompassed in indirect areas such as vessel transit route. Finally, three bowhead feeding BIAs were identified. Again, there is no spatial overlap of the activity area with these BIAs.

From July 8, 2008, through August 25, 2008, BPXA conducted a 3D seismic survey in the Liberty Prospect, Beaufort Sea. During the August survey a mixed-species group of whales was observed in one sighting near the barrier islands that included bowhead and gray whales (Aerts *et al.,* 2008). This is the only known survey sighting of bowhead whales within Foggy Island Bay despite industry surveys occurring during the open water season in 2010, 2014, and 2015 and NMFS aerial surveys flown inside Foggy Island Bay in 2016 and 2017.

Alaska Natives have been taking bowhead whales for subsistence purposes for at least 2,000 years (Marquette and Bockstoce, 1980, Stoker

and Krupnik, 1993). Subsistence takes have been regulated by a quota system under the authority of the IWC since 1977. Alaska Native subsistence hunters, primarily from 11 Alaska communities, take approximately 0.1–0.5 percent of the population per annum (Philo *et al.,* 1993, Suydam *et al.,* 2011). The average annual subsistence take (by Natives of Alaska, Russia, and Canada) during the 5-year period from 2011 through 2015 is 43 landed bowhead whales (Muto *et al.,* 2018).

Gray Whale

The eastern North Pacific population of gray whales migrates along the coasts of eastern Siberia, North America, and Mexico (Allen and Angliss 2010; Weller *et al.,* 2002) and population size has been steadily increasing, potentially reaching carrying capacity (Allen and Angliss, 2010, 2012). Abundance estimates will likely rise and fall in the future as the population finds a balance with the carrying-capacity of the environment (Rugh *et al.,* 2005). The steadily increasing population abundance warranted delisting of the eastern North Pacific gray whale stock in 1994, as it was no longer considered endangered or threatened under the ESA (Rugh *et al.,* 1999). A five-year status review determined that the stock was neither in danger of extinction nor likely to become endangered in the foreseeable future, thus, retaining the non-threatened classification (Rugh *et al.,* 1999). Table 2 provided population parameters for this stock.

The gray whale migration may be the longest of any mammalian species. They migrate over 8,000 to 10,000 km (5,000 to 6,200 mi) between breeding lagoons in Mexico and Arctic feeding areas each spring and fall (Rugh *et al.,* 1999). The southward migration out of the Chukchi Sea generally begins during October and November, passing through Unimak Pass in November and December, then continues along a coastal route to Baja California (Rice *et al.,* 1984). The northward migration usually begins in mid-February and continues through May (Rice *et al.* 1984).

Gray whales are the most coastal of all the large whales and inhabit primarily inshore or shallow, offshore continental shelf waters (Jones and Swartz, 2009); however, they are more common in the Chukchi than in the Beaufort Sea. Throughout the summers of 2010 and 2011, gray whales regularly occurred in small groups north of Point Barrow and west of Barrow (George *et al.,* 2011; Shelden *et al.,* 2012). In 2011, there were no sightings of gray whales east of Point Barrow during ASAMM aerial surveys (Clarke *et al.,* 2012); however, they were observed east of Point Barrow, primarily in the vicinity of Barrow Canyon, from August to October 2012 (Clarke *et al.,* 2013). Gray whales were again observed east of Point Barrow in 2013, with all sightings in August except for one sighting in late October (Clarke *et al.,* 2014). In 2014, sightings in the Beaufort Sea included a few whales east of Point Barrow and one north of Cross Island near Prudhoe Bay (Clarke *et al.,* 2015b). Gray whales prefer shoal areas (<60 m (197 ft) deep) with low (<7 percent) ice cover (Moore and DeMaster, 1997). These areas provide habitat rich in gray whale prey (amphipods, decapods, and other invertebrates).

From July 8, 2008 through August 25, 2008, BPXA conducted a 3D seismic survey in the Liberty Prospect, Beaufort Sea. During the August survey a mixed-species group of whales was observed in one sighting near the barrier islands that included bowhead and gray whales (Aerts *et al.,* 2008). This is the only known survey sighting of gray whales within Foggy Island Bay despite industry surveys occurring during the open water season in 2010, 2014, and 2015 and NMFS aerial surveys flown inside Foggy Island Bay in 2016 and 2017.

Beluga Whale

Five beluga whale stocks are present in Alaska including the Cook Inlet, Bristol Bay, eastern Bering Sea, eastern Chukchi Sea, and Beaufort Sea stocks (O'Corry-Crowe *et al.,* 1997, Allen and Angliss, 2015). The eastern Chukchi and Beaufort Sea stocks are thought to overlap in the Beaufort Sea. Both stocks are closely associated with open leads and polynyas in ice-covered regions throughout Arctic and sub-Arctic waters of the Northern Hemisphere. Distribution varies seasonally. Whales from both the Beaufort Sea and eastern Chukchi Sea stocks overwinter in the Bering Sea. Belugas of the eastern Chukchi may winter in offshore, although relatively shallow, waters of the western Bering Sea (Richard *et al.,* 2001), and the Beaufort Sea stock may winter in more nearshore waters of the northern Bering Sea (R. Suydam, pers. comm. 2012c). In the spring, belugas migrate to coastal estuaries, bays, and rivers. Annual migrations may cover thousands of kilometers (Allen and Angliss, 2010, 2012a).

Satellite telemetry data from 23 whales tagged in Kaseguluk Lagoon in 1998 through 2002 provided information on movements and migrations of eastern Chukchi Sea belugas. Animals initially traveled north and east into the northern Chukchi and western Beaufort seas after capture (Suydam *et al.,* 2001, 2005). Movement patterns between July and September vary by age and/or sex classes. Adult males frequent deeper waters of the Beaufort Sea and Arctic Ocean (79–80° N), where they remain throughout the summer. Immature males moved farther north than immature females but not as far north as adult males. All of the belugas frequented water deeper than 200 m (656 ft) along and beyond the continental shelf break. Use of the inshore waters within the Beaufort Sea Outer Continental Shelf lease sale area was rare (Suydam *et al.,* 2005).

Most information on distribution and movements of belugas of the Beaufort Sea stock was similarly derived using satellite tags. A total of 30 belugas were tagged in the Mackenzie River Delta, Northwest Territories, Canada, during summer and autumn in 1993, 1995, and 1997 (Richard *et al.,* 2001). Approximately half of the tagged whales traveled far offshore of the Alaskan coastal shelf, while the remainder traveled on the shelf or near the continental slope (Richard *et al.,* 2001). Migration through Alaskan waters lasted an average of 15 days. In 1997, all of the tagged belugas reached the western Chukchi Sea (westward of 170° W) between September 15 and October 9. Overall, the main fall migration corridor for beluga whales is believed to be approximately 62 mi (100 km) north of the Project Area (Richard *et al.,* 1997, 2001). Both the spring (April-May) and fall (September-October) migratory corridor BIAs for belugas are far north of the proposed action area because sightings of belugas from aerial surveys in the western Beaufort Sea are primarily on the continental slope, with relatively few sightings on the shelf (Clarke *et al.,* 2015). No reproductive and feeding BIAs exist for belugas in the action area (Clarke *et al.,* 2015).

O'Corry *et al.* (2018) studied genetic marker sets in 1,647 beluga whales. The data set was from over 20 years and encompassed all of the whales' major coastal summering regions in the Pacific Ocean. The genetic marker analysis of the migrating whales revealed that while both the wintering and summering areas of the eastern Chukchi Sea and eastern Beaufort Sea subpopulations may overlap, the timing of spring migration differs such that the whales hunted at coastal sites in Chukotka, the Bering Strait (*i.e.,* Diomede), and northwest Alaska (*i.e.,* Point Hope) in the spring and off of Alaska's Beaufort Sea coast in summer were predominantly from the eastern Beaufort Sea population. Earlier genetic investigations and recent telemetry

studies show that the spring migration of eastern Beaufort whales occurs earlier and through denser sea ice than eastern Chukchi Sea belugas. The discovery that a few individual whales found at some of these spring locations had higher likelihood of having eastern Chukchi Sea ancestry or being of mixed-ancestry, indicates that the Bering Strait region is also an area where the stock mix in spring. Citta *et al.* (2016) also observed that tagged eastern Beaufort Sea whales migrated north in spring through the Bering Strait earlier than the eastern Chukchi belugas so they had to pass through the latter's primary wintering area. Therefore, the eastern Chukchi stock should not be present in the action area at any time in general, but especially during summer-late fall, when the beluga exposures would be anticipated for this project. Therefore, we assume all belugas impacted by the proposed project are from the Beaufort Sea stock.

Beluga whales were regularly sighted during the September-October BWASP and the more recent ASAMM aerial surveys of the Alaska Beaufort Sea coast. Burns and Seaman (1985) suggest that beluga whales are strongly associated with the ice fringe and that the route of the autumn migration may be mainly determined by location of the drift ice margin. Relatively few beluga whales have been observed in the nearshore areas (on the continental shelf outside of the barrier islands) of Prudhoe Bay. However, groups of belugas have been detected nearshore in September (Clarke *et al.,* 2011a) and opportunistic sightings have been recorded from Northstar Island and Endicott. These sightings are part of the fall migration which generally occurs farther offshore although a few sightings of a few individuals do occur closer to the shore, and occasionally inside the barrier islands of Foggy Island Bay. During the 2008 seismic survey in Foggy Island Bay, three sightings of eight individuals were observed at a location about 3 mi (4.8 km) east of the Endicott Satellite Drilling Island (Aerts *et al.,* 2008). In 2014, during a BPXA 2D HR shallow geohazard survey in July and August, PSOs recorded eight groups of approximately 19 individual beluga whales, five of which were juveniles (Smultea *et al.,* 2014). During the open water season July 9 through July 19, 2015, five sightings of belugas occurred (Cate *et al.,* 2015). Also in 2015, acoustic monitoring was conducted in Foggy Island Bay between July 6 and September 22, 2015, to characterize ambient sound conditions and to determine the acoustic occurrence of marine mammals near Hilcorp's Liberty Prospect in Foggy Island Bay (Frouin-Jouy *et al.,* 2015). Two recorders collected underwater sound data before, during, and after Hilcorp's 2015 geohazard survey (July 6–Sept. 22). Detected marine mammal vocalizations included those from beluga whales and pinnipeds. Belugas were detected on five days by passive-recorders inside the bay during the three-month survey period (Frouin-Jouy *et al.,* 2015). During the 2016 and 2017 ASAMM surveys flown inside Foggy Island Bay, no belugas were observed. Beluga whales are the cetacean most likely to be encountered during the open-water season in Foggy Island Bay, albeit few in abundance.

Ringed Seal

One of five Arctic ringed seal stocks, the Alaska stock, occurs in U.S. waters. The Arctic subspecies of ringed seals was listed as threatened under the ESA on December 28, 2012, primarily due to expected impacts on the population from declines in sea and snow cover stemming from climate change within the foreseeable future (77 FR 76706). However, on March 11, 2016, the U.S. District Court for the District of Alaska issued a decision in a lawsuit challenging the listing of ringed seals under the ESA (*Alaska Oil and Gas Association et al.* v. *National Marine Fisheries Service,* Case No. 4:14–cv–00029–RRB). The decision vacated NMFS' listing of Arctic ringed seals as a threatened species. However, on February 12, 2018, in *Alaska Oil & Gas Association* v. *Ross*, Case No. 16–35380, the U.S. Court of Appeals for the Ninth Circuit reversed the district court's 2016 decision. As such, Arctic ringed seals remain listed as threatened under the ESA.

During winter and spring in the United States, ringed seals are found throughout the Beaufort and Chukchi Seas; they occur in the Bering Sea as far south as Bristol Bay in years of extensive ice coverage. Most ringed seals that winter in the Bering and Chukchi Seas are thought to migrate northward in spring with the receding ice edge and spend summer in the pack ice of the northern Chukchi and Beaufort Seas.

Ringed seals are resident in the Beaufort Sea year-round, and based on results of previous surveys in Foggy Island Bay (Aerts *et al.,* 2008, Funk *et al.,* 2008, Savarese *et al.,* 2010, Smultea *et al.,* 2014), and monitoring from Northstar Island (Aerts and Richardson, 2009, 2010), they are expected to be the most commonly occurring pinniped in the action area year-round.

Ringed seals are present in the nearshore and sea ice year-round, maintaining breathing holes and excavating subnivean lairs in the landfast ice during the ice-covered season. Ringed seals overwinter in the landfast ice in and around the LDPI action area. There is some evidence indicating that ringed seal densities are low in water depths of less than 3 m, where landfast ice extending from the shoreline generally freezes to the sea bottom in very shallow waters during the course of the winter (Moulton *et al.,* 2002a, Moulton *et al.,* 2002b, Richardson and Williams, 2003). Ringed seals that breed on shorefast ice may either forage within 100 km (62.1 mi) of their breeding habitat or undertake extensive foraging trips to more productive areas at distances of between 100–1,000 kilometers (Kelly *et al.,* 2010b). Adult Arctic ringed seals show site fidelity, returning to the same subnivean site after the foraging period ends. Movements are limited during the ice-bound months, including the breeding season, which limits their foraging activities and may minimize gene flow within the species (Kelly *et al.* 2010b). During April to early June (the reproductive period), radio-tagged ringed seals inhabiting shorefast ice near Prudhoe Bay had home range sizes generally less than 1,336 ac (500 ha) in area (Kelly *et al.,* 2005). Sub-adults, however, were not constrained by the need to defend territories or maintain birthing lairs and followed the advancing ice southward to winter along the Bering Sea ice edge where there may be enhanced feeding opportunities and less exposure to predation (Crawford *et al.,* 2012). Sub-adult ringed seals tagged in the Canadian Beaufort Sea similarly undertook lengthy migrations across the continental shelf of the Alaskan Beaufort Sea into the Chukchi Sea, passing Point Barrow prior to freeze-up in the central Chukchi Sea (Harwood *et al.,* 2012). Factors most influencing seal densities during May through June in the central Beaufort Sea between Oliktok Point and Kaktovik were water depth, distance to the fast ice edge, and ice deformation. Highest densities of seals were at depths of 5 to 35 m (16 to 144 ft) and on relatively flat ice near the fast ice edge (Frost *et al.,* 2004).

Sexual maturity in ringed seals varies with population status. It can be as early as 3 years for both sexes and as late as 7 years for males and 9 years for females. Ringed seals breed annually, with timing varying regionally. Mating takes place while mature females are still nursing their pups on the ice and

is thought to occur under the ice near birth lairs. In all subspecies except the Okhotsk, females give birth to a single pup hidden from view within a snow-covered birth lair. Ringed seals are unique in their use of these birth lairs. Pups learn how to dive shortly after birth. Pups nurse for 5 to 9 weeks and, when weaned, are four times their birth weights. Ringed seal pups are more aquatic than other ice seal pups and spend roughly half their time in the water during the nursing period (Lydersen and Hammill, 1993). Pups are normally weaned before the break-up of spring ice.

Ringed seals are an important resource for Alaska Native subsistence hunters. Approximately 64 Alaska Native communities in western and northern Alaska, from Bristol Bay to the Beaufort Sea, regularly harvest ice seals (Ice Seal Committee, 2016). Based on the harvest data from 12 Alaska Native communities, a minimum estimate of the average annual harvest of ringed seals in 2009–2013 is 1,050 seals (Muto *et al.,* 2016).

Other sources of mortality include commercial fisheries and predation by marine and terrestrial predators including polar bears, arctic foxes, walrus, and killer whales. During 2010–2014, incidental mortality and serious injury of ringed seals was reported in 4 of the 22 federally-regulated commercial fisheries in Alaska monitored for incidental mortality and serious injury by fisheries observers: the Bering Sea/Aleutian Islands flatfish trawl, Bering Sea/Aleutian Islands pollock trawl, Bering Sea/Aleutian Islands Pacific cod trawl, and Bering Sea/Aleutian Islands Pacific cod longline fisheries (Muto *et al.,* 2016). From May 1, 2011 to December 31, 2016, 657 seals, which included 233 dead stranded seals, 179 subsistence hunted seals, and 245 live seals, stranded or were sampled during permitted health assessments studies. Species involved were primarily ice seals including ringed, bearded, ribbon, and spotted seals in northern and western Alaska. The investigation identified that clinical signs were likely due to an abnormality of the molt, but a definitive cause for the abnormal molt was not determined.

Bearded Seal

Two subspecies of bearded seal have been described: *E. b. barbatus* from the Laptev Sea, Barents Sea, North Atlantic Ocean, and Hudson Bay (Rice 1998); and *E. b. nauticus* from the remaining portions of the Arctic Ocean and the Bering and Okhotsk seas (Ognev, 1935, Scheffer, 1958, Manning, 1974, Heptner *et al.,* 1976). On December 28, 2012, NMFS listed two distinct population segments (DPSs) of the *E. b. nauticus* subspecies of bearded seals—the Beringia DPS and Okhotsk DPS—as threatened under the ESA (77 FR 76740). Similar to ringed seals, the primary concern for these DPSs is the ongoing and projected loss of sea-ice cover stemming from climate change, which is expected to pose a significant threat to the persistence of these seals in the foreseeable future (based on projections through the end of the 21st century; Cameron *et al.,* 2010). Similar to ringed seals, the ESA listing of the Beringia and Okhotsk DPSs of bearded seal was challenged in the U.S. District Court for the District of Alaska, and on July 25, 2014, the court vacated NMFS' listing of those DPSs of bearded seals as threatened under the ESA (*Alaska Oil and Gas Association et al.* v. *Pritzker,* Case No. 4:13–cv–00018–RRB). However, the U.S. Court of Appeals for the Ninth Circuit reversed the district court's 2016 decision on October 24, 2016 (*Alaska Oil & Gas Association* v. *Pritzer*, Case No. 14–35806). As such, the Beringia and Okhotsk DPSs of bearded seal remain listed as threatened under the ESA.

For the purposes of MMPA stock assessments, the Beringia DPS is considered the Alaska stock of the bearded seal (Muto *et al.,* 2016). The Beringia DPS of the bearded seal includes all bearded seals from breeding populations in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E longitude (Novosibirskiye) in the East Siberian Sea and 130° W longitude in the Canadian Beaufort Sea, except west of 157° W longitude in the Bering Sea and west of the Kamchatka Peninsula (where the Okhotsk DPS is found). They generally prefer moving ice that produces natural openings and areas of open-water (Heptner *et al.,* 1976, Fedoseev, 1984, Nelson *et al.,* 1984). They usually avoid areas of continuous, thick, shorefast ice and are rarely seen in the vicinity of unbroken, heavy, drifting ice or large areas of multi-year ice (Fedoseev, 1965, Burns and Harbo, 1972, Burns and Frost, 1979, Burns, 1981, Smith, 1981, Fedoseev, 1984, Nelson *et al.,* 1984).

Spring surveys conducted in 1999–2000 along the Alaska coast indicate that bearded seals are typically more abundant 20–100 nautical miles (nmi) from shore than within 20 nmi from shore, except for high concentrations nearshore to the south of Kivalina (Bengtson *et al.,* 2005; Simpkins *et al.,* 2003).

Although bearded seal vocalizations (produced by adult males) have been recorded nearly year-round in the Beaufort Sea (MacIntyre *et al.,* 2013, MacIntyre *et al.,* 2015), most bearded seals overwinter in the Bering Sea. In addition, during late winter and early spring, Foggy Island Bay is covered with shorefast ice and the nearest lead systems are at least several kilometers away, making the area unsuitable habitat for bearded seals. Therefore, bearded seals are not expected to be encountered in or near the LDPI portion of the action area during this time (from late winter through early spring).

During the open-water period, the Beaufort Sea likely supports fewer bearded seals than the Chukchi Sea because of the more extensive foraging habitat available to bearded seals in the Chukchi Sea. In addition, as a result of shallow waters, the sea floor in Foggy Island Bay south of the barrier islands is often scoured by ice, which limits the presence of bearded seal prey species. Nevertheless, aerial and vessel-based surveys associated with seismic programs, barging, and government surveys in this area between 2005 and 2010 reported several bearded seal sightings (Green and Negri, 2005, Green and Negri 2006, Green *et al.,* 2007, Funk *et al.,* 2008, Hauser *et al.,* 2008, Savarese *et al.,* 2010, Clarke *et al.,* 2011, Reiser *et al.,* 2011). In addition, eight bearded seal sightings were documented during shallow geohazard seismic and seabed mapping surveys conducted in July and August 2014 (Smultea *et al.,* 2014). Frouin-Mouy *et al.* (2016) conducted acoustic monitoring in Foggy Island Bay from early July to late September 2014, and detected pinniped vocalizations on 10 days via the nearshore recorder and on 66 days via the recorder farther offshore. Although the majority of these detections were unidentified pinnipeds, bearded seal vocalizations were positively identified on two days (Frouin-Mouy *et al.,* 2016).

Bearded seals are an important resource for Alaska Native subsistence hunters. Approximately 64 Alaska Native communities in western and northern Alaska, from Bristol Bay to the Beaufort Sea, regularly harvest ice seals (Ice Seal Committee, 2016). However, during 2009–2013, only 12 of 64 coastal communities were surveyed for bearded seals; and, of those communities, only 6 were surveyed for two or more consecutive years (Ice Seal Committee, 2016). Based on the harvest data from these 12 communities (Table 2), a minimum estimate of the average annual harvest of bearded seals in 2009–2013 is 390 seals. Harvest surveys are designed to estimate harvest within the surveyed community, but because of differences in seal availability, cultural hunting practices, and environmental

conditions, extrapolating harvest numbers beyond that community is not appropriate (Muto *et al.,* 2016).

Of the 22 federally-regulated U.S. commercial fisheries in Alaska monitored for incidental mortality and serious injury by fisheries observers, 12 fisheries could potentially interact with bearded seals. During 2010–2014, incidental mortality and serious injury of bearded seals occurred in three fisheries: The Bering Sea/Aleutian Islands pollock trawl, Bering Sea/Aleutian Islands flatfish trawl, and Bering Sea/Aleutian Islands Pacific cod trawl fisheries (Muto *et al.,* 2016). This species was also part of the aforementioned 2011–2016 UME.

Spotted Seal

Spotted seals are distributed along the continental shelf of the Bering, Chukchi, and Beaufort seas, and the Sea of Okhotsk south to the western Sea of Japan and northern Yellow Sea. Eight main areas of spotted seal breeding have been reported (Shaughnessy and Fay, 1977) and Boveng *et al.* (2009) grouped those breeding areas into three DPSs: The Bering DPS, which includes breeding areas in the Bering Sea and portions of the East Siberian, Chukchi, and Beaufort seas that may be occupied outside the breeding period; the Okhotsk DPS; and the Southern DPS, which includes spotted seals breeding in the Yellow Sea and Peter the Great Bay in the Sea of Japan. For the purposes of MMPA stock assessments, NMFS defines the Alaska stock of spotted seals to be that portion of the Bering DPS in U.S. waters.

The distribution of spotted seals is seasonally related to specific life-history events that can be broadly divided into two periods: Late-fall through spring, when whelping, nursing, breeding, and molting occur in association with the presence of sea ice on which the seals haul out, and summer through fall when seasonal sea ice has melted and most spotted seals use land for hauling out (Boveng *et al.,* 2009). Spotted seals are most numerous in the Bering and Chukchi seas (Quakenbush, 1988), although small numbers do range into the Beaufort Sea during summer (Rugh *et al.,* 1997; Lowry *et al.,* 1998).

At Northstar, few spotted seals have been observed. A total of 12 spotted seals were positively identified near the source-vessel during open-water seismic programs in the central Alaskan Beaufort Sea, generally occurring near Northstar from 1996 to 2001 (Moulton and Lawson, 2002). The number of spotted seals observed per year ranged from zero (in 1998 and 2000) to four (in 1999).

During a seismic survey in Foggy Island Bay, PSOs recorded 18 pinniped sightings, of which one was confirmed as a spotted seal (Aerts *et al.,* 2008). Spotted seals were the second most abundant seal species observed by PSOs during Hilcorp's geohazard surveys in July-August 2014 (Smultea *et al.,* 2014) and in July 2015 (Cate *et al.,* 2015). Given their seasonal distribution and low numbers in the nearshore waters of the central Alaskan Beaufort Sea, no spotted seals are expected in the action area during late winter and spring, but could be present in low numbers during the summer or fall.

Similar to other ice seal species, spotted seals are an important resource for Alaska Native subsistence hunters. Of the 12 communities (out of 64) surveyed during 2010–2014, the minimum annual spotted seal harvest estimates totaled across 12 out of 64 user communities surveyed ranged from 83 (in 2 communities) to 518 spotted seals (in 10 communities). Based on the harvest data from these 12 communities, a minimum estimate of the average annual harvest of spotted seals in 2010–2014 is 328 seals.

From 2011–2015, incidental mortality and serious injury of spotted seals occurred in 2 of the 22 federally-regulated U.S. commercial fisheries in Alaska monitored for incidental mortality and serious injury by fisheries observers: The Bering Sea/Aleutian Islands flatfish trawl and Bering Sea/Aleutian Islands Pacific cod longline fisheries. In 2014, there was one report of a mortality incidental to research on the Alaska stock of spotted seals, resulting in a mean annual mortality and serious injury rate of 0.2 spotted seals from this stock in 2011–2015. This species was also part of the aforementioned 2011–2016 UME.

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 and 2019) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- *Low-frequency cetaceans (mysticetes):* Generalized hearing is estimated to occur between approximately 7 (hertz) Hz and 35 kHz;
- *Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids):* Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- *High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data):* Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- *Pinnipeds in water; Phocidae (true seals):* Functional hearing is estimated to occur between approximately 50 Hz to 86 kHz; and
- *Pinnipeds in water; Otariidae (eared seals):* Functional hearing is estimated to occur between approximately 60 Hz and 39 kHz.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Six marine mammal species (three cetacean and three phocid pinniped) have the potential to co-occur with Hilcorp's LDPI project. Of the three cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species) and one is classified as a mid-frequency cetacean (beluga whale).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take 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.

The potential impacts of the proposed LDPI on marine mammals involve both non-acoustic and acoustic effects. Potential non-acoustic effects could result from the physical presence of personnel, structures and equipment, construction or maintenance activities, and the occurrence of oil spills. The LDPI project also has the potential to result in mortality and serious injury of ringed seals via direct physical interaction on ice roads and harass (by Level A harassment and Level B harassment) cetaceans and seals via acoustic disturbance. We first discuss the effects of ice road and ice trail construction and maintenance on ringed seals with respect to direct human interaction followed by an in-depth discussion on sound and potential effects on marine mammals from acoustic disturbance. The potential for and potential impacts from both small and large oil spills are discussed in more detail later in this section; however, please note Hilcorp did not request, nor is NMFS proposing to authorize, take from oil spills.

Mortality, Serious Injury and Non-Acoustic Harassment—Ice Seals

This section discusses the potential impacts of ice road construction, use and maintenance on ringed seals, the only species likely to be encountered during this activity. Acoustic impacts from this and other activities (*e.g.,* pile driving) are provided later in the document. To assess the potential impacts from ice roads, one must understand sea ice dynamics, the influence of ice roads on sea ice, and ice seal ecology.

Sea ice is constantly moving and flexing due to winds, currents, and snow load. Sea ice grows (thickens) to its maximum in March, then begins to degrade once solar heating increases above the necessary threshold. Sea ice will thin and crack due to atmospheric pressure and temperature changes. In the absence of ice roads, sea ice is constantly cracking, deforming (creating pressure ridges and hummocks), and thickening or thinning. Ice road construction interrupts this dynamic by permanently thickening and stabilizing the sea ice for the season; however, it thins and weakens sea ice adjacent to ice roads due to weight of the ice road and use as speed and load of vehicles using the road creates pressure waves in the ice, cracking natural ice adjacent to the road (pers. comm., M. Williams, August 17, 2018). These cracks and thinned ice, occurring either naturally or adjacent to ice roads, are easily exploitable habitat for ringed seals.

As discussed in the Description of Marine Mammal section, ringed seals build lairs which are typically concentrated along pressure ridges, cracks, leads, or other surface deformations (Smith and Stirling 1975, Hammill and Smith, 1989, Furgal *et al.,* 1996). To build a lair, a pregnant female will first excavate a breathing hole, most easily in cracked or thin ice. The lair will then be excavated (snow must be present for lair construction). Later in the season, basking holes may be created from collapsed lairs or new basking holes will be excavated; both of which must have breathing holes and surface access (pers. comm., M. Williams, August 17, 2018).

Williams *et al.* (2006) provides the most in-depth discussion of ringed seal use around Northstar Island, the first offshore oil and gas production facility seaward of the barrier islands in the Alaskan Beaufort Sea. Northstar is located 9.5 km from the mainland on a manmade gravel island in 12 m of water. In late 2000 and early 2001, sea ice in areas near Northstar Island where summer water depth was greater than 1.5 m was searched for ringed seal structures. At Northstar, ringed seals were documented creating and using sea ice structures (basking holes, breathing holes, or birthing lairs) within 11 to 3,500 m (36 to 11,482 ft) of Northstar infrastructure which includes ice roads, pipeline, and the island itself (Williams *et al.,* 2006). Birth lairs closest to Northstar infrastructure were 882 m and 144 m (2,894 and 374 ft) from the island and ice road, respectively (Williams *et al.,* 2006). Two basking holes were found within 11 and 15 m (36 and 49 ft) from the nominal centerline of a Northstar ice road and were still in use by the end of the study (Williams *et al.,* 2006). Although located in deeper water outside of the barrier islands, we anticipate ringed seals would use ice around the LDPI and associated ice roads in a similar manner.

Since 1998, there have been three documented incidents of ringed seal interactions on North Slope ice roads, with one recorded mortality. On April 17, 1998, during a vibroseis on-ice seismic operation outside of the barrier islands east of Bullen Point in the eastern Beaufort Sea, a ringed seal pup was killed when its lair was destroyed by a Caterpillar tractor clearing an ice road. The lair was located on ice over water 9 m (29 ft) deep with an ice thickness of 1.3 m (4.3 ft). It was reported that an adult may have been present in the lair when it was destroyed. Crew found blood on the ice near an open hole approximately 1.3 km (0.8 mi) from the destroyed lair; this could have been from a wounded adult (MacLean, 1998). On April 24, 2018, a Tucker (a tracked vehicle used in snow conditions) traveling on a Northstar sea ice trail broke through a brine pocket. After moving the Tucker, a seal pup climbed out of the hole in the ice, but no adult was seen in the area. The seal pup remained in the area for the next day and a half. This seal was seen in an area with an estimated water depth of 6 to 7 m (20 to 24 ft) (Hilcorp, 2018b). The third reported incident occurred on April 28, 2018, when a contractor performing routine maintenance activities to relocate metal plates beneath the surface of the ice road from Oliktok Point to Spy Island Drill site spotted a ringed seal pup next to what may have been a lair site. No adult was observed in the area. The pup appeared to be acting normally and was seen going in and out of the opening several times (Eni, 2018).

Overall, NMFS does not anticipate the potential for mortality or serious injury of ringed seals to be high given there has been only one documented mortality over 25 years of ice road construction in the Arctic. However, the potential does exist; therefore, we are including a small amount of mortality or serious injury (n = 2) in this proposed rule over the five-year life of the regulations. To mitigate this risk, NMFS and Hilcorp have developed a number of best management practices (BMPs) aimed at reducing the potential of disturbing (*e.g.,* crushing) ice seal structures on ice roads (see Proposed Mitigation and Monitoring).

Potential Acoustic Impacts—Level A Harassment and Level B Harassment

In the following discussion, we provide general background information

on sound before considering potential effects to marine mammals from sound produced by construction and operation of the LDPI.

Description of Sound Sources

This section contains a brief technical background on sound, on 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. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks 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 decibel (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 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) 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.

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 sound produced by the pile driving activity 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, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). 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 wind and waves, which 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. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. 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. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. 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.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time 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 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

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). See Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

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 intermittent (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. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Acoustic Effects

We previously provided general background information on marine mammal hearing (see ''Description of Marine Mammals in the Area of the Specified Activity''). Here, we discuss the potential effects of sound on marine mammals.

Potential Effects of Underwater Sound—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. 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 pile driving.

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.

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 construction and operational activities associated with the LDPI do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Auditory Threshold Shifts

NMFS defines threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in decibels (ANSI, 1995). Threshold shift can be permanent (PTS) or temporary (TTS). As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014b), and their overlap (*e.g.,* spatial, temporal, and spectral).

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 decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 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.

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.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or 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. 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 (2018).

NMFS defines TTS as ''a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2016). A TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002, as reviewed in Southall *et al.,* 2007 for a review). TTS can last from minutes or hours to days (*i.e.,* there is recovery), occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be temporarily reduced by only 6 dB or reduced by 30 dB). Currently, TTS measurements exist for only four species of cetaceans (bottlenose dolphins, belugas, harbor porpoises, and Yangtze finless porpoise) and three species of pinnipeds (Northern elephant seal, harbor seal, and California sea lion). These TTS measurements are from a limited number of individuals within these species.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Behavioral Effects—Behavioral disturbance from elevated noise exposure 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). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to

stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically 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 low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 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; 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).

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 airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at

the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; 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.

Potential Effects of Hilcorp's Activity—As described previously (see ''Description of the Specified Activity''), Hilcorp proposes to build ice roads, install a pipeline, construct and operate a gravel island using impact and vibratory pile driving, and drill for oil in Foggy Island Bay. These activities would occur under ice and open water conditions (with the exception of ice roads). These activities have the potential to harass marine mammals from acoustic disturbance (all species) and via human disturbance/presence on ice (ice seals). There is also potential for ice seals, specifically ringed seals, to be killed in the event a lair is crushed during ice road construction and maintenance in undisturbed areas after March 1, annually.

NMFS analyzed the potential effects of oil and gas activities, including construction of a gravel island and associated infrastructure, in its 2016 EIS on the Effects of Oil and Gas Activities in the Arctic Ocean (NMFS, 2016; available at *https://www.fisheries.noaa.gov/resource/document/effects-oil-and-gas-activities-arctic-ocean-final-environmental-impact*). Although that document focuses on seismic exploration, there is a wealth of information in that document on marine mammal impacts from anthropogenic noise. More specific to the proposed project, BOEM provides a more detailed analysis on the potential impacts of the Liberty LDPI in its' EIS on the Liberty Development and Production Plan, Beaufort Sea, Alaska, on which NMFS was a cooperating agency (BOEM, 2018; available at *https://www.boem.gov/Hilcorp-Liberty/*). We refer to those documents, specifically Chapter 4 of each of those documents, as a comprehensive impact assessment but provide a summary and complimentary analysis here.

The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (as summarized in Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

For all noise-related activities, bowhead and gray whales are not anticipated to be exposed to noise above NMFS harassment threshold often. As previously described, Hilcorp aims to conduct all pile driving during the ice-covered season, as was done at Northstar; however, they are allowing for unforeseen scheduling delays. Bowheads are not present near LDPI during the winter and are not normally found in the development area during mid-summer (July through mid-August) when the whales are further east in the Canadian Beaufort. Therefore there are no impacts on foraging habitat for bowhead whales during mid-summer. Starting in late August and continuing until late October, bowheads may be exposed to sounds from the proposed activities at LDPI or may encounter vessel traffic to and from the island. It is unlikely that any whales would be displaced from sounds generated by activities at the LDPI due to their distance from the offshore migrating whales, and the effects of buffering from the barrier islands. Any displacement would be subtle and involve no more than a small proportion of the passing bowheads, likely less than that found at Northstar (Richardson, 2003, 2004; Mcdonald *et al.,* 2012). This is due to the baffling-effect of the barrier island between the construction activity and the main migratory pathway of bowhead whales. Moreover, mitigation such as avoiding pile driving during the fall bowhead whale hunt further reduces potential for harassment as whales are migrating offshore.

Ongoing activities such as drilling may also harass marine mammals; however, drilling sounds from artificial islands are relatively low. As summarized in Richardson *et al.* (1995), beluga whales (the cetacean most likely to occur in Foggy Island Bay) are often observed near drillsites within 100 to 150 m (328.1 to 492.1 ft) from artificial islands. Drilling operations at Northstar facility during the open-water season resulted in brief, minor localized effects on ringed seals with no consequences to ringed seal populations (Richardson and Williams, 2004). Adult ringed seals seem to tolerate drilling activities. Brewer *et al.* (1993) noted ringed seals were the most common marine mammal sighted and did not seem to be disturbed by drilling operations at the Kuvlum 1 project in the Beaufort Sea. Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to continuous sound and reported that the limited data suggest exposures between ~90 and 140 dB re 1 μPa generally do not appear to induce strong behavioral responses in pinnipeds exposed to continuous sounds in water. Hilcorp will conduct acoustic monitoring during drilling to determine if future incidental take authorizations are warranted from LDPI operation.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area (*i.e.,* shallow waters in modified industrial areas).

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to the durations animals use sound (either emitting or receiving) on a daily basis, and over a small spatial scale

relative to marine mammal ranges. Therefore, the potential impacts from masking are limited in both time and space. Further, the frequencies output of pile driving are low relative to the range of frequencies used by most species for vital life functions such as communication or foraging. In summary, we expect some masking to occur; however, the biological impacts of any potential masking are anticipated to be negligible. Finally, any masking that might rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Oil Spills

During the life of the proposed regulations, Hilcorp would be actively drilling for crude oil in Foggy Island Bay and transporting that oil via a single-phase subsea pipe-in-pipe pipeline from the LDPI to shore, where an aboveground pipeline will transport crude to the existing Badami pipeline. From there, crude will be transported to the Endicott Sales Oil Pipeline, which ties into Pump Station 1 of the TransAlaska Pipeline System (TAPS) for eventual delivery to a refinery. Whenever oil is being extracted or transported, there is potential for a spill. Accidental oil spills have a varying potential to occur and with varying impacts on marine mammals. For example, if a spill or pipeline leak occurs during the winter, oil would be trapped by the ice. However, response may be more difficult due in part to the presence of ice. If a spill or leak occurs during the open-water season, oil may disperse more widely; however, response time may be more prompt. Spills may also be large or small. Small spills are defined as spills of less than 1,000 barrels (bbls), and a large spill is greater than 1,000 bbls. For reference, 1 bbl equates to 42 gallons.

Based on BOEM's oil spill analyses in its EIS, the only sized spills that are reasonably likely to occur in association with the proposed action are small spills (<1,000 bbls) (BOEM, 2017a). Small spills, although accidental, occur during oil and gas activities with generally routine frequency and are considered likely to occur during development, production, and/or decommissioning activities associated with the proposed action. BOEM estimates about 70 small spills, most of which would be less than 10 bbls, would occur over the life of the Liberty Project. Small crude oil spills would not likely occur before drilling operations begin. Small refined oil spills may occur during development, production, and decommissioning. The majority of small spills are likely to occur during the approximate 22-year production period, which is an average of about 3 spills per year.

The majority of small spills would be contained on the proposed LDPI or landfast ice (during winter). BOEM anticipates that small refined spills that reach the open water would be contained by booms or absorbent pads; these small spills would also evaporate and disperse within hours to a few days. A 3 bbl refined oil spill during summer is anticipated to evaporate and disperse within 24 hours, and a 200 bbl refined oil spill during summer is anticipated to evaporate and disperse within 3 days (BOEM, 2017a).

A large spill is a statistically unlikely event. The average number of large spills for the proposed action was calculated by multiplying the spill rate (Bercha International Inc., 2016; BOEM, 2017a), by the estimated barrels produced (0.11779 bbl or 117.79 Million Barrels). By adding the mean number of large spills from the proposed LDPI and wells (~0.0043) and from pipelines (~0.0024), a mean total of 0.0067 large spills were calculated for the proposed action. Based on the mean spill number, a Poisson distribution indicates there is a 99.33 percent chance that no large spill occurs over the development and production phases of the project, and a 0.67 percent chance of one or more large spills occurring over the same period. The statistical distribution of large spills and gas releases shows that it is much more likely that no large spills or releases occur than that one or more occur over the life of the project. However, a large spill has the potential to seriously harm ESA-listed species and their environment. Assuming one large spill occurs instead of zero allows BOEM to more fully estimate and describe potential environmental effects (BOEM, 2017a).

Hilcorp is currently developing its oil spill response plan in coordination with the Bureau of Safety and Environmental Enforcement (BSEE) who must approve the plan. BSEE oversees oil spill planning and preparedness for oil and gas exploration, development, and production facilities in both state and Federal offshore waters of the United States. NMFS provided BSEE with its recommended marine mammal oil spill response protocols available at *https://www.fisheries.noaa.gov/resource/document/pinniped-and-cetacean-oil-spill-response-guidelines.* NMFS has provided BSEE with recommended marine mammal protocols should a spill occur. BSEE has indicated NMFS will have opportunity to provide comments on Hilcorp's plan during a Federal agency public comment period. As noted above, Hilcorp did not request, and NMFS is not proposing to authorize, take of marine mammals incidental to oil spills. NMFS does not authorize incidental take from oil spills under section 101(a)(5)(A) of the MMPA in general, and oil spills are not part of the specified activity in this case.

Cetaceans

While direct mortality of cetaceans is unlikely, exposure to spilled oil could lead to skin irritation, baleen fouling (which might reduce feeding efficiency), respiratory distress from inhalation of hydrocarbon vapors, consumption of some contaminated prey items, and temporary displacement from contaminated feeding areas. Geraci and St. Aubin (1990) summarize effects of oil on marine mammals, and Bratton *et al.* (1993) provides a synthesis of knowledge of oil effects on bowhead whales. The number of whales that might be contacted by a spill would depend on the size, timing, and duration of the spill. Whales may not avoid oil spills, and some have been observed feeding within oil slicks (Goodale *et al.,* 1981).

The potential effects on cetaceans are expected to be less than those on seals (described later in this section of the document). Cetaceans tend to occur well offshore where cleanup activities (in the open-water season) are unlikely to be as concentrated. Also, cetaceans are transient and, during the majority of the year, absent from the area. Further, drilling would be postponed during the bowhead whale hunt every fall; therefore, the risk to cetaceans during this time, when marine mammal presence and subsistence use is high, has been fully mitigated.

Pinnipeds

Ringed, bearded, and spotted seals are present in open-water areas during summer and early autumn, and ringed seals remain in the area through the ice-covered season. Therefore, an oil spill from LDPI or its pipeline could affect seals. Any oil spilled under the ice also has the potential to directly contact seals. The most relevant data of pinnipeds exposed to oil is from the Exxon Valdez oil spill (EVOS).

The largest documented impact of a spill, prior to the EVOS, was on young seals in January in the Gulf of St. Lawrence (St. Aubin, 1990). Intensive and long-term studies were conducted after the EVOS in Alaska. There may

have been a long-term decline of 36 percent in numbers of molting harbor seals at oiled haulout sites in Prince William Sound following EVOS (Frost *et al.,* 1994a). However, in a reanalysis of those data and additional years of surveys, along with an examination of assumptions and biases associated with the original data, Hoover-Miller *et al.* (2001) concluded that the EVOS effect had been overestimated. Harbor seal pup mortality at oiled beaches was 23% to 26%, which may have been higher than natural mortality, although no baseline data for pup mortality existed prior to EVOS (Frost *et al.,* 1994a).

Adult seals rely on a layer of blubber for insulation, and oiling of the external surface does not appear to have adverse thermoregulatory effects (Kooyman *et al.,* 1976, 1977; St. Aubin, 1990). However, newborn seal pups rely on their fur for insulation. Newborn ringed seal pups in lairs on the ice could be contaminated through contact with oiled mothers. There is the potential that newborn ringed seal pups that were contaminated with oil could die from hypothermia. Further, contact with oil on the external surfaces can potentially cause increased stress and irritation of the eyes of ringed seals (Geraci and Smith, 1976; St. Aubin, 1990). These effects seemed to be temporary and reversible, but continued exposure of eyes to oil could cause permanent damage (St. Aubin, 1990). Corneal ulcers and abrasions, conjunctivitis, and swollen nictitating membranes were observed in captive ringed seals placed in crude oil-covered water (Geraci and Smith, 1976), and in seals in the Antarctic after an oil spill (Lillie, 1954).

Marine mammals can ingest oil if their food is contaminated. Oil can also be absorbed through the respiratory tract (Geraci and Smith, 1976; Engelhardt *et al.,* 1977). Some of the ingested oil is voided in vomit or feces but some is absorbed and could cause toxic effects (Engelhardt, 1981). When returned to clean water, contaminated animals can depurate this internal oil (Engelhardt, 1978, 1982, 1985). In addition, seals exposed to an oil spill are unlikely to ingest enough oil to cause serious internal damage (Geraci and St. Aubin, 1980, 1982).

Since ringed seals are found year-round in the U.S. Beaufort Sea and more specifically in the project area, an oil spill at any time of year could potentially have effects on ringed seals. However, they are more widely dispersed during the open-water season. Spotted seals are unlikely to be found in the project area during late winter and spring. Therefore, they are more likely to be affected by a spill in the summer or fall seasons. Bearded seals typically overwinter south of the Beaufort Sea. However, some have been reported around Northstar during early spring (Moulton *et al.,* 2003b).

Oil Spill Cleanup Activities

Oil spill cleanup activities could increase disturbance effects on either whales or seals, causing temporary disruption and possible displacement (BOEM, 2018). General issues related to oil spill cleanup activities are discussed earlier in this section for cetaceans. In the event of a large spill contacting and extensively oiling coastal habitats, the presence of response staff, equipment, and the many aircraft involved in the cleanup could (depending on the time of the spill and the cleanup) potentially displace seals. If extensive cleanup operations occur in the spring, they could cause increased stress and reduced pup survival of ringed seals. Oil spill cleanup activity could exacerbate and increase disturbance effects on subsistence species, cause localized displacement of subsistence species, and alter or reduce access to those species by hunters. On the other hand, the displacement of marine mammals away from oil-contaminated areas by cleanup activities would reduce the likelihood of direct contact with oil. Impacts to subsistence uses of marine mammals are discussed later in this document (see the ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Potential Take From Oil Spills

Hilcorp did not request, and NMFS is not proposing to authorize, take of marine mammals incidental to oil spills. Should an oil spill occur and marine mammals are killed, injured, or harassed by the spill, the ''taking'' would be unauthorized. However, NMFS is including mitigation and reporting measures within these proposed regulations to minimize risk to marine mammals. Should an oil spill occur at the drill site and that oil enter the marine environment such that marine mammals are at risk of exposure, NMFS is proposing to include a mitigation measure that Hilcorp notify NMFS immediately and cease drilling until NMFS can assess the severity of the spill and potential impacts to marine mammals. Should the pipeline leak, crude oil transport via the pipeline would also cease immediately until the pipeline is repaired. In the case of any spill, Hilcorp would immediately initiate communication and response protocol per its Oil Spill Response Plan. Finally, Hilcorp must maintain the frequency of oil spill response training at no less than one two hour session per week.

Anticipated Effects on Marine Mammal Habitat

The footprint of the LPDI would result in permanent impacts to habitats used directly by marine mammals; however, the footprint is minimal compared to available habitat within Foggy Island Bay and, further, few cetaceans use Foggy Island Bay. BOEM has also required mitigation designed to reduce impacts to marine mammal habitat, including water quality and habitat disturbance. For example, initial island construction (fill placement phase) and pipeline installation/backfill will occur in winter when fewer fish species are present and when water currents are low, which will reduce total suspended solids (TSS) distribution. In addition, island armoring will serve to reduce erosion and the spread of silt or gravel over potential prey habitat. However, increased turbidity and suspended solids resulting from artificial island construction or exploratory drilling discharges could have adverse impacts on water quality and, if increases persisted for extended periods of time; these impacts would be localized but could be long term (NOAA, 2016). If oil and gas industry operators comply with the U.S. Environmental Protection Agency's Clean Water Act requirements, then elevations in turbidity and concentrations of total suspended solids resulting from exploratory drilling activity would not result in unreasonable degradation of the marine environment (NOAA, 2016).

The proposed activities could also affect acoustic habitat (see Auditory Masking discussion above), but meaningful impacts are unlikely given the low usage of the area by marine mammals and limited pile driving during open-water conditions (approximately 2 weeks). There are no known foraging hotspots, or habitats of significant biological importance to marine mammals present in the marine waters in Foggy Island Bay. Migratory pathways for cetaceans exist outside the McClure Island group; however, the majority of noise from the project would be confined to Foggy Island Bay with low levels potentially propagating outside of but close to the McClure Islands during vibratory pile driving only (see Figure 5 in Appendix A of Hilcorp's application). In addition, pile driving would not occur during the fall bowhead whale migration (see Proposed Mitigation section); therefore, no impacts to migratory habitats during use is anticipated during this time period.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely to occur in fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

The area likely impacted by the activities is relatively small compared to the available habitat in inland waters in the region. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the LDPI to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this proposed rule, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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 pile hammers, drill rigs, and ice-based equipment (*e.g.,* augers, trucks) have the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result during pile driving. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

No mortality or serious injury is anticipated as a result of exposure to acoustic sources; however, mortality and serious injury of ringed seals may occur from ice road construction, use, and maintenance conducted after March 1, annually. Below we describe how we estimated mortality and serious injury from ice road work followed by a detailed acoustic harassment estimation method.

Mortality/Serious Injury (Ice Seals)

The only species with the potential to incur serious injury or mortality during the proposed project are ringed seals during ice road construction, use, and maintenance. Other ice seal species are not known to use ice roads within the action area. As described in the Description of Marine Mammals section, pregnant ringed seals establish lairs in shorefast sea ice beginning in early March where pups are born and nursed throughout spring (March through May).

As described in the *Potential Effects of the Specified Activity on Marine Mammals and Their Habitat* section above, there have been only three documented interactions with ringed seals despite over 20 years of ice road construction on the North Slope; one mortality in 1998 and two non-lethal interactions in 2018. All three animals involved were seal pups in or near their lairs. The two recent interactions in 2018 led NMFS to work with the companies involved in the interactions, including Hilcorp, to better understand the circumstances behind the interactions and to develop a list of BMPs designed to avoid and minimize potential harassment. Hilcorp has adopted these BMPs (see *Proposed Mitigation and Monitoring* section); however, the potential for mortality remains, albeit low. Because lairs can include both a pup and its mother, but interactions with ringed seals are relatively uncommon, NMFS is proposing to authorize the taking, by mortality or serious injury, of two ringed seals over the course of five years of ice road construction.

Acoustic Harassment

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 (*e.g.,* 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 Level B harassment. NMFS predicts that marine mammals are likely to be 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.

Hilcorp's Liberty Project includes the use of continuous, non-impulsive (vibratory pile driving, drilling, auguring) and intermittent, impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (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). Hilcorp's proposed activity includes the use of impulsive (*e.g.,* impact pile driving) and non-impulsive (*e.g.,* vibratory pile driving, slope shaping, trenching) sources.

These thresholds are provided in Table 3. 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 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

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

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

In shallow water noise propagation is highly dependent on the properties of the bottom and the surface, among other things. Parameters such as depth and the bottom properties can vary with distance from the source. There is a low-frequency cut-off related to the water depth, below which energy is transferred directly into the sea floor. Overall, the transmission loss in shallow water is a combination of cylindrical spreading effects, bottom interaction effects at lower frequencies and scattering losses at high frequencies. To estimate ensonfied area, Hilcorp used the parabolic equation (PE) modelling algorithm RAMGeo (Collins, 1993) to calculate the transmission loss between the source and the receiver (SLR, 2017). The full modeling report, including details on modeling methodology and procedure and ensonification area figures, can be found in the Underwater and Airborne Noise Modelling Report attached as Appendix A in Hilcorp's application. We provide a summary here.

RAMGeo is an efficient and reliable PE algorithm for solving range-

dependent acoustic problems with fluid seabed geo-acoustic properties. The noise sources were assumed to be omnidirectional and modelled as point sources. In practice many sources are directional, this assumption is conservative. To estimate Level A harassment and Level B harassment threshold distances, Hilcorp first obtained one-third octave source spectral levels via reference spectral curves with their subsequent corrections based on their corresponding overall source levels. Table 4 contains estimated source levels and Appendix B in Hilcorp's acoustic modeling report contains source spectrum shape used in the model (SLR, 2018).

TABLE 4—ESTIMATED SOURCE LEVELS AND DURATION

Activity	Underwater source levels (db re: 1 μPa)		Airborne (db re: 20μPa)	Number of piles per day	Max. duration per day
	Ice-covered season	Open-water season			
Pipeline installation (trucks on ice, backhoe, ditchwitch)	169.6–179.1	N/A	74.8–78 @100 m.	N/A	12 hrs.
Sheet pile—*vibratory*	221	185	81 @100 m	20	2.5 hrs.[1]
Sheet pile—*impact*	235.7	210	93 @160 m		40 min.[2]
Conductor pipe—*vibratory*				16	2.5 hrs (proxy from sheet piles).
Conductor pipes/foundation piles—*impact*	171.7	196			2 hrs.[3]
Slope shaping/armoring	n/a	167	64.7 @100 m	n/a	9.6 hrs.
Drilling and production	170.5	151	80 @200 m	n/a	24 hrs.

[1] Estimated based on 20 piles per day, 7.5 min per pile.
[2] Average duration estimate is 20 min per day.
[3] Hilcorp estimates 440–6,300 strikes per day.

Hilcorp relied on operational data from Northstar construction activities to estimate LDPI construction activity methods and durations. Greene *et al.* (2008) indicates impact pile driving at Northstar was required only to finish off each pile after vibratory driving it into the frozen material of old Seal Island. Since Liberty will be a newly constructed gravel island, driving sheet piles should be easier than was the case at Northstar. Impact sheet pile driving therefore may not be required at Liberty and is included in the application as a precaution. Hilcorp assumed approximately 2 minutes and 100 strikes per pile with a maximum of 20 piles installed per day. Blackwell *et al.* (2004a) observed impact pipe driving at Northstar. On most days, one conductor pipe was driven in a day over a period of 5 to 8.5 hours. The longest day of observation was 10.5 hours in which time two pipes were driven. The observation period each day included all pipe driving time, but driving was never continuous during the entire observation period. Hilcorp applied a correction factor to the Northstar duration, assuming pipe driving at the LDPI would actually occur for 20 percent of the total installation time logged at Northstar.

The scenarios with theoretical potential for PTS onset are slope shaping, vibratory driving, and impact pile driving and pipe driving during the open water season. Hilcorp did not model distances to PTS thresholds during ice-covered conditions because no cetaceans are present in the region during this time and noise levels are expected to attenuate very rapidly under ice conditions. Hilcorp did not request, nor does NMFS anticipate, take by Level A harassment (PTS) during island construction conducted under ice conditions. The following discussion on PTS potential is limited to the open-water season.

Table 5 summarizes Hilcorp's modeled distances to NMFS PTS thresholds using the maximum durations identified above (see also Tables 16 through 18 in Appendix A of Hilcorp's application for shorter durations). We note marine mammals would have to be extremely close to the island during slope shaping and pile driving for an extended period of time to potentially incur PTS. We find these durations at distance are highly unlikely and have concluded the potential for PTS from slope shaping and vibratory pile driving for any marine mammal hearing group does not exist. Table 6 summarizes distances and ensonified areas to NMFS Level B harassment thresholds during ice-covered and open water conditions.

TABLE 5—RADIAL DISTANCES TO NMFS LEVEL A HARASSMENT THRESHOLDS AND ENSONIFIED AREA DURING THE OPEN-WATER SEASON

Marine mammal hearing group (species)	Activity (duration) and distance to threshold (ensonified area)			
	Slope shaping (9.6 hrs)	Vibratory sheet piling (2.5 hrs)	Impact sheet piling (40 min)	Impact pipe driving (2 hrs)
Low frequency cetaceans (bowhead, gray whales).	<10 m (0 km^2)	50 m (164 ft)	1,940 (11.8 km^2)	87 m (2.38 km^2)
Mid frequency cetaceans (belugas).	n/a	<10 m (0 km^2)	60 m (0.01 km^2)	27 m (0.002 km^2)
Phocid Pinnipeds (bearded, ringed, spotted seals).	<10 m (0 km^2)	20 m (66 ft)	526 m (0.87 km^2)	240 m (0.18 km^2)

TABLE 6—RADIAL DISTANCES TO NMFS LEVEL B HARASSMENT THRESHOLDS AND ENSONIFIED AREA

Activity	Ice-covered	Open water [1]			Airborne noise
	Underwater noise—ice-covered (m)	Min (m)	Median (m)	Max (m)	
Ice road construction and maintenance	170	n/a	n/a	n/a	<15
Pipeline construction	210	n/a	n/a	n/a	<15
Sheet pile driving—vibratory	390	12,000	14,800	17,500	15
Sheet pile driving—impact	90	1,700	2,050	2,250	100
Conductor pipe/foundation pile driving—impact	11	300	315	400	100
Slope shaping/armoring	n/a	880	1,160	1,260	<15
Helicopter (take-off/landing)	n/a	n/a	n/a	n/a	67
Drilling and Production	230	20	55	85	30

[1] Open water results are minimum, median and maximum distance to the appropriate noise threshold across all depths calculated in the direction of maximum noise propagation from the source, away from shore. Median distances were used to estimate ensonified areas and take calculations.

Marine Mammal Occurrence

Each fall and summer, NMFS and BOEM conduct an aerial survey in the Arctic, the Aerial Survey of Arctic Marine Mammals (ASAMM) surveys. The goal of these surveys is to document the distribution and relative abundance of bowhead, gray, right, fin and beluga whales and other marine mammals in areas of potential oil and natural gas exploration, development, and production activities in the Alaskan Beaufort and northeastern Chukchi Seas. Traditionally, only fall surveys were conducted but then, in the summer of 2012 (mid-July), the first dedicated summer survey effort began in the ASAMM Beaufort Sea study area. Hilcorp used these ASAMM surveys as the data source to estimate seasonal densities of cetaceans (bowhead, gray and beluga whales) in the project area. The ASAMM surveys are conducted within blocks that overlay the Beaufort and Chukchi Seas oil and gas lease sale areas offshore of Alaska (Figure 6–1 in Hilcorp's application), and provide sighting data for bowhead, gray, and beluga whales during summer and fall months. During the summer and fall, NMFS observed for marine mammals on effort for 7,990 km and 9,244 km, respectively, from 2011 through 2016. Data from those surveys are used for this analysis. We note the location of the proposed LDPI project is in ASAMM survey block 1; the inshore boundary of this block terminates at the McClure Island group. It was not until 2016 that on-effort surveys began inside the McClure Island group (*i.e.,* Foggy Island Bay) since bowhead whales, the focus of the surveys, are not likely to enter the bay. During ASAMM surveys in Foggy Island Bay, no marine mammals have been observed. Therefore, the density estimates provided here are an overestimate because they rely on offshore surveys where marine mammals are concentrated.

Bowhead Whale

Summer and fall bowhead whale densities were calculated using the results from ASAMM surveys from 2011 through 2017. The surveys provided sightings and effort data by month and season (summer and fall), as well as each survey block (Clarke *et al.,* 2012, 2013a, 2014, 2015, 2017). Bowhead whale densities were calculated in a two-step approach; they first calculated a sighting rate of whales per km, then they multiplied the transect length by the effective strip width using the modeled species-specific effective strip width for an aero commander aircraft calculated by Ferguson and Clarke (2013). Where the effective strip width is the half-strip width, it must be multiplied by 2 in order to encompass both sides of the transect line. Thus whale density was calculated as follows: Whales per km^2 = whales per kilometer/(2 × the effective strip width). The effective strip width for bowhead whales was calculated to be 1.15 km (CV=0.08). Table 7 contains pooled data from 2011 through 2017 Block 1 ASAMM surveys and resulting densities.

The resulting densities are expected to be overestimates for the LDPI analysis because data is based on sighting effort outside the barrier islands, and bowhead and gray whales rarely occur within the barrier islands, while belugas also are found in higher abundance outside of Foggy Island Bay.

TABLE 7—BOWHEAD WHALE SIGHTING DATA FROM 2011 THROUGH 2017 AND RESULTING DENSITIES

Year	Season	Month	Transect effort (km)	Number of whale sighted	Whale/km	Whale/km^2
2011	Summer	Jul–Aug	346	1	0.003	0.001
	Fall	Sept–Oct	1,476	24	0.016	0.007
2012	Summer	Jul–Aug	1,493	5	0.003	0.001
	Fall	Sept–Oct	1,086	14	0.013	0.006
2013	Summer	Jul–Aug	1,582	21	0.013	0.006
	Fall	Sept–Oct	1,121	21	0.019	0.008
2014	Summer	Jul–Aug	1,393	17	0.012	0.005
	Fall	Sept–Oct	1,538	79	0.051	0.022
2015	Summer	Jul–Aug	1,262	15	0.012	0.005
	Fall	Sept–Oct	1,663	17	0.010	0.004
2016	Summer	Jul–Aug	1,914	74	0.039	0.017
	Fall	Sept–Oct	2,360	19	0.008	0.004
2017	Summer	Jul–Aug	3,003	8	0.003	0.001

TABLE 7—BOWHEAD WHALE SIGHTING DATA FROM 2011 THROUGH 2017 AND RESULTING DENSITIES—Continued

Year	Season	Month	Transect effort (km)	Number of whale sighted	Whale/km	Whale/km^2
	Fall	Sept–Oct	1,803	85	0.047	0.020
Total	Summer		10,993	141	[1] 0.012	[1] 0.005
	Fall		11,047	259	[1] 0.023	[1] 0.0010

[1] Value represents average, not total, across all years per relevant season.

Gray Whales

Gray whales are rare in the project area and ASAMM aerial survey block 1. From 2011 through 2017 only two gray whales have been observed during ASAMM block 1 surveys despite over 21,000 miles of trackline effort, for a resulting density of zero (Table 8). However, a group of baleen whales comprised of both bowhead and gray whales was observed during industry marine mammal surveys in Foggy Island Bay in 2008. Therefore, Hilcorp has requested, and NMFS proposes to authorize, take, by Level B harassment, of two gray whales annually during the effective period of the proposed regulations on the chance gray whales enter the ensonified zone during LDPI activities.

TABLE 8—GRAY WHALE SIGHTING DATA FROM 2011 THROUGH 2017 AND RESULTING DENSITIES

Year	Season	Month	Transect effort (km)	Number of whales sighted	Whale/km	Whale/km^2
2011	Summer	Jul–Aug	346	0	0.000	0.000
	Fall	Sept–Oct	1,476	0	0.000	0.000
2012	Summer	Jul–Aug	1,493	0	0.000	0.000
	Fall	Sept–Oct	1,086	0	0.000	0.000
2013	Summer	Jul–Aug	1,582	0	0.000	0.000
	Fall	Sept–Oct	1,121	0	0.000	0.000
2014	Summer	Jul–Aug	1,393	0	0.000	0.000
	Fall	Sept–Oct	1,538	1	0.001	0.000
2015	Summer	Jul–Aug	1,262	0	0.000	0.000
	Fall	Sept–Oct	1,663	0	0.000	0.000
2016	Summer	Jul–Aug	1,914	1	0.001	0.000
	Fall	Sept–Oct	2,360	0	0.000	0.000
2017	Summer	Jul–Aug	3,003	0	0.001	0.000
	Fall	Sept–Oct	1,803	0	0.000	0.000
Total	Summer		10,993	1	0	0.000
	Fall		11,047	1	0	0.000

Beluga Whales

As with the large whales, beluga whale presence is anticipated to be higher outside the barrier islands. Sighting data collected during industry marine mammal surveys in Foggy Island Bay (as described in the *Description of Marine Mammals* section) are used to estimate likelihood of presence when deriving final proposed take numbers; however, these data were not collected in a manner that allows for a derivation of density inside the bay or integration into the ASAMM survey data. The ASAMM surveys were recently extended into Foggy Island Bay; however, no beluga whales or any other cetaceans were observed while within the Bay. Table 9 presents block 1 ASAMM survey data and resulting densities for beluga whales. We note the 2012 and 2013 ASAMM reports stratified beluga whale sightings by depth rather than by survey block. Because the final beluga whale take numbers presented in this proposed rule are adjusted based on expected presence in the entire bay based on marine mammal monitoring by industry in Foggy Island Bay, NMFS did not pursue investigating the raw data further and believe the values here are a reasonable and conservative representation of density in survey block 1 based on comparison to other ASAMM survey year sighting rates where sightings by blocks are available.

TABLE 9—BELUGA WHALE SIGHTING DATA FROM 2011 THROUGH 2017 AND RESULTING DENSITIES

Year	Season	Month	Transect effort (km)	Number of whales sighted	Whale/km	Whale/km^2
2011	Summer	Jul–Aug	346	0	0.000	0.000
	Fall	Sept–Oct	1,476	0	0.000	0.000
2012	Summer	Jul–Aug	5,001	47	0.009	0.008
	Fall	Sept–Oct	4,868	5	0.001	0.001
2013	Summer	Jul–Aug	4,270	75	0.018	0.014
	Fall	Sept–Oct	3,372	2	0.001	0.0005
2014	Summer	Jul–Aug	1,393	13	0.009	0.008
	Fall	Sept–Oct	1,538	9	0.006	0.005

TABLE 9—BELUGA WHALE SIGHTING DATA FROM 2011 THROUGH 2017 AND RESULTING DENSITIES—Continued

Year	Season	Month	Transect effort (km)	Number of whales sighted	Whale/km	Whale/km²
2015	Summer	Jul–Aug	1,262	37	0.029	0.024
	Fall	Sept–Oct	1,663	3	0.002	0.001
2016	Summer	Jul–Aug	1,914	349	0.182	0.148
	Fall	Sept–Oct	2,360	15	0.006	0.005
2017	Summer	Jul–Aug	3,003	4	0.001	0.001
	Fall	Sept–Oct	1,803	0	0.000	0.000
Total	Summer		17,189	521	0	0.029
	Fall		17,080	34	0	0.002

Ringed Seals

Limited data are available on ringed seal densities in the southern Beaufort Sea during the winter months; however, ringed seals winter ecology studies conducted in the 1980s (Kelly *et al.,* 1986, Frost and Burns, 1989) and surveys associated with the Northstar development (Williams *et al.,* 2001) provide information on both seal ice-structure use (where ice structures include both breathing holes and subnivean lairs), and on the density of ice structures.

Kelly *et al.* (1986) found that in the southern Beaufort Sea and Kotzebue Sound, radio-tagged seals used between 1 and at least 4 subnivean lairs. The distances between lairs was up to 4 km (10 mi), with numerous breathing holes in-between (Kelly *et al.,* 1986). While Kelly *et al.* (1986) calculated the average number of lairs used per seal to be 2.85, they also suggested that this was likely to be an underestimate. To estimate winter ringed seal density within the project area, the average ice structure density of 1.45/km² was divided by the average number of ice structures used by an individual seal of 2.85 (SD=2.51; Kelly *et al.,* 1986). This results in an estimated density of 0.510 ringed seals/km² during the winter months. This density is likely to be overestimated due to Kelly *et al.* (1986)'s suggestion that their estimate of the average number of lairs used by a seal was an underestimate (the denominator used).

For spring ringed seal densities, aerial surveys flown in 1997 through 2002 over Foggy Island Bay and west of Prudhoe Bay during late May and early June (Frost *et al.,* 2002, Moulton *et al.,* 2002b, Richardson and Williams, 2003), when the greatest percentage of seals have abandoned their lairs and are hauled out on the ice (Kelly *et al.,* 2010), provides the best available information on ringed seal densities.

Because densities were consistently very low where water depth was less than 3 m (and these areas are generally frozen solid during the ice-covered season) densities have been calculated where water depth was greater than 3 m deep (Moulton *et al.,* 2002a, Moulton *et al.,* 2002b, Richardson and Williams, 2003). Based on the average density of surveys flown 1997 to 2002, the uncorrected average density of ringed seals during the spring is expected to be 0.548 ringed seals/km². Because the number of seals is expected to be much lower during the open water season, we estimated summer (open-water) ringed seal density to be 50 percent of the spring densities, resulting in an estimated density of 0.27 ringed seals/km². Ringed seals remain in the water through the fall and in to the winter, however, due to the lack of available data on fall densities within the LDPI action area we have assumed the same density of ringed seals as in the summer; 0.27 ringed seals/km² (see Hilcorp's application and NMFS (2018) for more data details).

Bearded Seals

Industry monitoring surveys for the Northstar development during the spring seasons in 1999 (Moulton *et al.,* 2000), 2000 (Moulton *et al.,* 2001), 2001 (Moulton *et al.,* 2002a), and 2002 (Moulton *et al.,* 2003) counted 47 bearded seals (annual mean of 11.75 seals during an annual mean of 3,997.5 km² of effort); these data were insufficient to calculate a reliable density estimate in each year, no other on bearded seal presence were available. Annual reports (Richardson, 2008) for years 2000 through 2002 include similar figures. A winter and spring density using the four years of Northstar development data equates to 0.003 bearded seals per km².

For the open-water season (summer and fall), bearded seal density was calculated as a proportion of the ringed seal summer density based on the percentage of pinniped sightings during monitoring surveys in 1996 (Harris *et al.,* 2001), 2008 (Aerts *et al.,* 2008, Hauser *et al.,* 2008), and 2012 (HDR, 2012). During these surveys, 63 percent were ringed seals, 17 percent were bearded seals and 20 percent were spotted seals. Thus, the density of bearded seals during the open water season (summer and fall) was calculated as 17 percent of the ringed seal density of 0.27 seals/km². This results in an estimated summer density for bearded seals of 0.05 seals/km².

Spotted Seals

Given their seasonal distribution and low numbers in the nearshore waters of the central Alaskan Beaufort Sea, no spotted seals are expected in the action area during late winter and spring, but a few individuals could be expected during the summer or fall. Using the same monitoring data described in the bearded seal section above, spotted seal density during the open water season (summer and fall) was calculated as 20 percent of the ringed seal summer density estimate (0.27 seals/km²) in the LDPI Project Area. This results in an estimated density of 0.05 seals/km².

A summary of marine mammal densities used to estimate exposures is provided, by season and species, in Table 10.

TABLE 10—SUMMARY OF MARINE MAMMAL DENSITIES

Species	Stock	Winter (Nov–Mar)	Spring (Apr–Jun)	Summer (Jul–Aug)	Fall (Sept–Oct)
Bowhead whale	Western Arctic	0	0	0.006	0.009

TABLE 10—SUMMARY OF MARINE MAMMAL DENSITIES—Continued

Species	Stock	Winter (Nov–Mar)	Spring (Apr–Jun)	Summer (Jul–Aug)	Fall (Sept–Oct)
Gray whale	Eastern N Pacific	0	0	0	0
Beluga whale	Beaufort Sea	0	0	0.029	0.002
Ringed seal	Alaska	0.51	0.548	0.27	0.27
Bearded seal	Alaska	0.003	0.003	0.05	0.05
Spotted seal	Alaska	0	0	0.05	0

Exposure Estimates

To quantitatively assess exposure of marine mammals to noise from the various activities associated with the Liberty Project, Hilcorp used the median range to which Level A harassment and Level B harassment thresholds were reached for ice road construction and maintenance, island construction, vibratory and impact sheet pile driving, impact conductor pipe driving, slope shaping, drilling, and production. Hilcorp considered the potential for take on any given day based on the largest Level B harassment zone for that day.

For each species, exposure estimates were calculated in a multi-step process. On any given day of the year, the expected take for that day per species was calculated as: *Density* × *ensonified area* (of the largest Level B harassment zone for that day). Results were then summed for the year to provide total exposure estimates per species.

In some cases, however, the calculated densities alone do not reflect the full potential of exposure. For example, beluga whale densities are quite low; however, previous marine mammal surveys in Foggy Island Bay have identified the potential for them to be there in greater numbers than reflected based on NMFS survey data alone. In other cases, the potential for exposure is almost discountable (*e.g.,* calculated gray whale takes are zero) but given they could appear in Foggy Island Bay, Hilcorp has requested take authorization. Hilcorp also requested take authorization for bowhead whales despite the lack of project-related noise above NMFS harassment thresholds extending much beyond the McClure Islands (*e.g.,* see Figure 02 in Appendix D of Hilcorp's application) where bowheads are more likely to be found. As described in the *Marine Mammal Occurrence* section, we used density based on surveys conducted outside of the McClure Islands; therefore, Hilcorp has likely overestimated potential take. However, given the sensitivities surrounding this species in the Arctic, we believe a precautionary approach is appropriate here to conservatively assess the potential effects on the stock and subsistence use.

Bowhead, gray, and beluga whales have the potential to be present and exposed to noise during the open-water season. Work during ice conditions (*e.g.,* pipeline installation, ice road construction) does not have the potential to harass cetaceans because they are not present in the action area. Hilcorp anticipates conducting a maximum of 15 days of open-water pile driving and could conduct slope shaping throughout the summer. The method described above was used to estimate take, by Level B harassment, in year 1 when the LDPI would be constructed.

There is a very low potential for large whale Level A harassment (PTS) from the specified activities given the rarity of bowhead and gray whales entering Foggy Island Bay. However, in an abundance of caution, Hilcorp has requested, and NMFS proposes to authorize, limited Level A harassment takes per year of each species potentially exposed to impact pile driving noise (Table 11). Group size was considered in Level B harassment take requests in cases where sighting data and group size indicate potential for a greater amount of take than calculated based on density (*e.g.,* beluga whale take request is higher than calculated take estimate). A small amount of the Level B harassment exposures were allocated to Level A harassment for the first year of work (*i.e.,* pile driving during open water).

For seals, a straight density estimate was used following the method described above. In assessing the calculated results; there was no need to adjust take numbers for Level B harassment.

The amount and manner of take Hilcorp requested, and NMFS proposes to authorize, for each species is summarized in Table 11 below. In addition to the takes listed below, Hilcorp requests, and NMFS is proposing to authorize, a total of two ringed seal mortalities over the life of the proposed regulations incidental to ice road construction, use, and maintenance.

TABLE 11—ANNUAL AND TOTAL AMOUNT OF PROPOSED TAKE INCIDENTAL TO HILCORP'S LDPI PROJECT

Year	Species (stock)					
	Bowhead (W Arctic)	Gray (ENP)	Beluga (Beaufort)	Ringed seal (AK)	Bearded seal (AK)	Spotted seal (AK)
Level A harassment						
1	2	2	10	5	2	2
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	0	0	0	0	0	0
5	0	0	0	0	0	0
Total Level A harassment	2	2	10	5	2	2
Level B harassment						
1	6	1	40	336	58	58

TABLE 11—ANNUAL AND TOTAL AMOUNT OF PROPOSED TAKE INCIDENTAL TO HILCORP'S LDPI PROJECT—Continued

Year	Species (stock)					
	Bowhead (W Arctic)	Gray (ENP)	Beluga (Beaufort)	Ringed seal (AK)	Bearded seal (AK)	Spotted seal (AK)
2	1	1	20	8	1	1
3	1	1	20	22	1	1
4	1	1	20	18	1	1
5	1	1	20	17	1	1
Total Level B harassment	10	5	120	401	62	62

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(A) and (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.

The mitigation measures presented here are a product of Hilcorp's application, recommendations from the Arctic peer review panel (available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*), NMFS' recommendations, and public comments on the **Federal Register** Notice of Receipt.

Construction Mitigation Measures

Hilcorp will aim to construct the island, including completing all pile driving, during the ice-covered season (as was done for Northstar). Should an ice seal be observed on or near the LDPI by any Hilcorp personnel, the sighting will be reported to Hilcorp's Environmental Specialist. No construction activity should occur within 10 m of an ice seal and any vehicles used should use precaution and not approach any ice seal within 10 m.

During the open-water season, the following mitigation measures apply: Hilcorp will station two protected species observers (PSOs) on elevated platforms on the island during all pile driving in open-water conditions (see Proposed Monitoring and Reporting for more details). Marine mammal monitoring shall take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 30 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone (which equates to the Level A harassment zone in Table 5) is clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented.

If a marine mammal is approaching a Level A harassment zone and pile driving has not commenced, pile driving shall be delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone; 15 minutes have passed without subsequent detections of small cetaceans and pinnipeds; or 30 minutes have passed without subsequent detections of large cetaceans. NMFS may adjust the shutdown zones pending review and approval of an acoustic monitoring report (see Monitoring and Reporting).

Hilcorp will use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

In the unlikely event a low frequency cetacean (bowhead or gray whale) approaches or enters the Level A harassment zone, pile driving would be shut down. If a mid-frequency cetacean (beluga) or pinniped (seal) enters the Level A harassment zone during pile driving, Hilcorp proposes to complete setting the pile (which takes ten to fifteen minutes from commencement) but not initiate additional pile driving of new piles until the marine mammal has left and is on a path away from the Level A harassment zone. Hilcorp would not commence pile driving if any species is observed approaching or within the Level A harassment zone during the pre-construction monitoring period.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (which equates to the Level B harassment zone in Table 6),

pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in above, has elapsed.

Hilcorp shall install the pipeline during the ice-covered season, thereby minimizing noise impacts to marine mammals as noise does not propagate well in ice and cetaceans are not present in the action area during winter.

Proposed Mitigation for Ice Road Construction, Maintenance, and Use

During ice road construction, Hilcorp would follow several BMPs recently developed through a collaborative effort with NMFS. These BMPs are informed by the best available information on how ice roads are constructed and maintained and ice seal lairing knowledge. They are designed to minimize disturbance and set forth a monitoring and reporting plan to improve knowledge. The complete BMP document is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

The ice road BMPs are applicable to construction and maintenance of Liberty sea ice roads and sea ice trails in areas where water depth is greater than 10 feet (ft) (the minimum depth required to establish ringed seal lairs) as well as any open leads in the sea ice requiring a temporary bridge during the ice road season. They are organized into the following categories: (1) Wildlife training; (2) general BMPs implemented throughout the ice road season; (3) BMPs to be implemented prior to March 1st; (4) BMPs to be implemented after March 1; and (4) reporting. We refer the reader to the complete BMP document on our website but provide a summary of provisions here.

Timing—Hilcorp will construct sea ice roads as early as possible (typically December 1 through mid-February) so that the entire corridor is disturbed prior to March 1, the known onset of lairing season. Blading and snow blowing of ice roads/trails will be limited to the previously disturbed and delineated areas to the extent safe and practicable. Snow will be plowed or blown from the ice surface so as to preserve the safety and integrity of the ice surface for continued use.

After March 1, annually, blading and snow blowing of ice roads will be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. However, when safety requires a new ice trail to be constructed after March 1st, construction activities such as drilling holes in the ice to determine ice quality and thickness, will be conducted only during daylight hours with good visibility. Ringed seal structures will be avoided by a minimum of 150 ft during ice testing and new trail construction.

Personnel—Hilcorp will employ a NMFS-approved, trained environmental field specialist who will serve as the primary ice seal monitor and main point of contact for any ice seal observations made by other Hilcorp staff, employees, or contractors. This person shall be in charge of conducting monitoring surveys every other day while the ice road is being actively used. The specialist will also be responsible for alerting all crew to ice seal sightings and reporting to the appropriate officials.

Training—Prior to initiation of annual sea ice road activities, all project personnel associated with ice road construction or use (*i.e.,* construction workers, surveyors, vehicle drivers security personnel, and the environmental team) will receive annual training on these BMPs. Annual training also includes reviewing the company's Wildlife Interaction Plan which has been modified to include reference to the BMPs and reporting protocol. In addition to the BMPs, other topics in the training may include ringed seal reproductive ecology (*e.g.,* temporal and spatial lairing behavior, habitat characteristics, potential disturbance effect, etc.) and summary of applicable laws and regulatory requirements including, but not limited to, MMPA incidental take authorization requirements.

General BMPs To Be Implemented Throughout Season—Hilcorp would establish ice road speed limits, delineate the roadways with highly visible markers (to avoid vehicles from driving off roadway where ice seals may be more likely to lair), and clearly mark corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice (to allow for easy location of materials when removed, minimizing disturbance to potentially nearby ice seals). Construction, maintenance or decommissioning activities associated with ice roads and trails will not occur within 150 ft of the observed ring seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 150 ft distance away from the activities or has not been observed within that area for at least 24 hours. All personnel would be prohibited from closely approaching any seal and would be required to report all seals sighted within 150 ft of the center of the ice road to the designated Environmental Specialist.

Once the new ice trail is established, tracked vehicle operation will be limited to the disturbed area to the extent practicable and when safety of personnel is ensured. If an ice road or trail is being actively used under daylight conditions with good visibility, a dedicated observer (not the vehicle operator) will conduct a survey along the sea ice road/trail to observe if any ringed seals are within 500 ft of the roadway corridor.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

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

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

Hilcorp submitted a POC to NMFS, dated April 18, 2018, which includes all the required elements included in the aforementioned regulations (available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*). The POC documents Hilcorp's stakeholder engagement activities, which began in 2014 for this project, with subsistence communities within the North Slope Region including Nuiqsut, Barrow and Kaktovik, the closest villages to the Project Area. The POC includes a description of the project, how access to the Project Area will occur, pipeline and island construction techniques, and drilling operations. The plan also describes the ongoing community outreach cooperation and coordination

and measures that will be implemented by Hilcorp to minimize adverse effects on marine mammal subsistence. The POC is a living document and will be updated throughout the LDPI review and permitting process. As such, Hilcorp intends to maintain open communication with all stakeholders throughout the Liberty permitting and development process. In addition, Hilcorp, along with several other North Slope Industry participants, has entered into a Conflict Avoidance Agreement (CAA) with the AEWC for all North Slope oil and gas activities to minimize potential interference with bowhead subsistence hunting. By nature of the measures, the mitigation described above also minimizes impacts to subsistence users and is not repeated here. Additional mitigation measures specific to subsistence use include:

- Avoid impact pile driving during the Cross Island bowhead whale hunt which usually occurs from the last week of August through mid-September;
- Schedule all non-essential boat, hovercraft, barge, and air traffic to avoid conflicting with the timing of the Cross Island bowhead hunt; and
- Adhere to all communication and coordination measures described in the POC.

During the comment period on BOEM's EIS for this project and our NOR announcing receipt of Hilcorp's application, the AEWC submitted comments pertaining to potential effects on subsistence use. The AEWC indicated Hilcorp's continued participation in the Open Water Season CAA and the Good Neighbor Policy (GNP), along with its willingness to work with the Nuiqsut Whaling Captains to mitigate subsistence harvest concerns are central to the AEWC's support for the Liberty Project. Further, recommendations from the peer-review panel recommended the existing POC and CAA should be renewed and implemented annually to ensure that project activities are coordinated with the North Slope Borough and Alaska Native whaling captains. Therefore, in addition to the activity specific mitigation measures above, NMFS is requiring Hilcorp to abide by the POC, and remain committed to the GNP throughout the life of the regulations. In addition, Hilcorp has committed to following the CAA.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS' MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

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

- Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior);
- 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 important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Marine Mammal Monitoring During the Open-Water Season

Hilcorp shall employ NMFS approved PSOs and conduct marine mammal monitoring per the Marine Mammal Monitoring Plan, dated February 12, 2019. Two PSOs will be placed on either side of the island where pile/pipe-driving or slope shaping activities are occurring. For example, one PSO would be placed on the side where construction activities are taking place and the other placed on the opposite side to provide complete observer coverage around the island. PSO stations will be moved around the island as needed during construction activities to provide full coverage. PSOs will be switched out such that they will observe for no more than 4 hours at a time and no more than 12 hours in a 24-hour period.

A third island-based PSO will work closely with an aviation specialist to monitor the Level B harassment zone during all open-water pile and pipe driving using an unmanned aircraft system (UAS). This third PSO and the UAS pilot will be located on the island. UAS monitoring will also be used during slope shaping, which may occur in open water intermittently until August 31 the first year the proposed regulations are valid. Should foundation piles be installed the subsequent year, the requirement for UAS will be dependent upon the success of the program in the previous year and results of any preliminary acoustic analysis during year 1 construction (*e.g.,* impact driving conductor pipes). Should UAS not be deemed effective and construction is ongoing during the open-water season, a vessel-based PSO shall observe the monitoring zone during pile and pipe driving.

During the open-water season, marine mammal monitoring will take place from 30 minutes prior to initiation of pile and pipe driving activity through 30 minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals must be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior must be monitored and documented.

During the ice-covered season, in addition to ice road monitoring (see below), Hilcorp personnel will report any ice seal sightings on or near the LDPI to Hilcorp's Environmental Specialist.

Acoustic Monitoring During the Open-Water Season

Hilcorp will conduct acoustic monitoring of island construction activities during the open-water season in accordance with its Acoustic

Monitoring Plan available on our website. In summary, Hilcorp proposes to annually conduct underwater acoustic monitoring during the open water season (July through the beginning of October) using Directional Autonomous Seafloor Acoustic Recorders (DASARs). One or more DASARs will be deployed at a pre-determined GPS location(s) away from the LDPI. Each DASAR will be connected by a ground line to an anchor on the seafloor. At the end of the open water season, the DASAR will be retrieved by dragging grappling hooks on the seafloor, perpendicular to and over the location of the ground line, as defined by the GPS locations of the anchor and DASAR. All activities conducted during the open water season will be monitored. Goals of the acoustic monitoring plan are to characterize LDPI construction and operation noises, ambient sound levels, and verify (or amend) modeled distances to NMFS harassment thresholds. Recorder arrangement will be configured each year based on the anticipated activities for that season and the modelled sound propagation estimates for the relevant sources. Hilcorp's acoustic monitoring plan can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Marine Mammal Monitoring During Ice Road Construction, Maintenance and Use

Hilcorp has prepared a comprehensive ice seal monitoring and mitigation plan via development of a BMP document which is available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* Hilcorp would be required to implement these BMPs; we provide a summary here but encourage the public to review the full BMP document.

Seal surveys will be conducted every other day during daylight hours. Observers for ice road activities need not be trained PSOs, but they must have received the species observation training and understand the applicable sections of Hilcorp's Wildlife Management Plan. In addition, they must be capable of detecting, observing and monitoring ringed seal presence and behaviors, and accurately and completely recording data. Observers will have no other primary duty than to watch for and report observations related to ringed seals during this survey. If weather conditions become unsafe, the observer may be removed from the monitoring activity.

Construction, maintenance or decommissioning activities associated with ice roads and trails will not occur within 150 ft of the observed ring seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 150 ft distance away from the activities or has not been observed within that area for at least 24 hours. Transport vehicles (*i.e.,* vehicles not associated with construction, maintenance or decommissioning) may continue their route within the designated road/trail without stopping.

If a ringed seal structure (*i.e.,* breathing hole or lair) is observed within 150 ft of the ice road/trail, the location of the structure will be reported to the Environmental Specialist who will then carry out a notification protocol. A qualified observer will monitor the structure every six hours on the day of the initial sighting to determine whether a ringed seal is present. Monitoring for the seal will occur every other day the ice road is being used unless it is determined the structure is not actively being used (*i.e.,* a seal is not sighted at that location during monitoring).

Monitoring Plan Peer Review

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

NMFS established an independent peer review panel (PRP) to review Hilcorp's 4MP for the proposed LDPI project in Foggy Island Bay. NMFS provided the PRP with Hilcorp's ITA application and monitoring plan and asked the panel to answer the following questions:

1. Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated above? If not, how should the objectives be modified to better accomplish the goals above?

2. Can the applicant achieve the stated objectives based on the methods described in the plan?

3. Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish their stated objectives?

4. Are there techniques not proposed by the applicant (*i.e.,* additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish their stated objectives?

5. What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (*i.e.,* 90-day report and comprehensive report)?

The PRP met in May 2018 and subsequently provided a final report to NMFS containing recommendations that the panel members felt were applicable to Hilcorp's monitoring plans. The PRP concluded the objectives for both the visual and acoustic monitoring are appropriate, and agrees that the objective of real-time mitigation of potential disturbance of marine mammals would be met through visual monitoring. The PRP's primary recommendations and comments are summarized and addressed below. The PRP's full report is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

The PRP recommended Hilcorp consult with biologists at the NMFS Marine Mammal Laboratory and other scientists and users familiar with the use and limitations of UAS technology for studying marine mammals at sea regarding appropriate protocols and procedures for the proposed project. Hilcorp has worked, and will continue to work, with NMFS to develop a safe, effective UAS monitoring program.

The PRP noted marine mammal monitoring would not be conducted during the ice-covered season. Since the PRP met, Hilcorp has developed a marine mammal monitoring plan that would be enacted during ice-covered months along the ice roads and ice trails. These roads lead up to the LDPI; therefore, marine mammal monitoring would occur during the ice-covered season and occur at the LDPI. NMFS has also included a provision that should ice seals be observed on or near the LDPI, they shall be reported to Hilcorp's Environmental Specialist and no personnel shall approach or operate equipment within 10 m of the seal.

The PRP was concerned no acoustic monitoring would be conducted during the winter months and recommended Hilcorp deploy multiple acoustic recorders during ice-covered periods to obtain data on both presence of marine

mammals and sound levels generated during pile driving activities. Hilcorp is not proposing to deploy long-term bottom mounted hydrophones but will collect measurements using hand-held hydrophones lowered in a hole drilled through the ice.

The PRP also encouraged Hilcorp to consider deployment of additional acoustic recorders during the open-water season approximately 15 km northwest of the project area to facilitate a broader, multi-year approach to analyzing the effect of sound exposure on marine mammals by various LDPI and non-LDPI sources. The deployment of multiple recorders would provide a measure of redundancy and avoid the risk of losing all of the season's data if the recorders are lost or malfunction. Hilcorp is proposing to position multiple recorders simultaneously to record sound levels at multiple ranges from the project activities. Data recorded during times with no project activities, if such times exist, will be analyzed for ambient sound level statistics. The recorder arrangement will be configured each year based on the anticipated activities for that season.

The PRP recommended that the existing POC and CAA be renewed and implemented annually to ensure that project activities are coordinated with the North Slope Borough and Alaska Native whaling captains. Hilcorp is required to implement the POC and has agreed to implement a CAA with the AEWC.

Reporting

General—A draft report would be submitted to NMFS within 90 days of the completion of monitoring for each year the regulations are valid. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. Hilcorp would also submit a comprehensive annual summary report covering all activities conducted under the incidental take regulations no more than 90 days after the regulations expire.

Ice Road Reporting

On an annual basis, Hilcorp will also submit a draft report to NMFS AKR and OPR compiling all ringed seal observations within 90 days of decommissioning the ice road and ice trails. The report will include information about activities occurring at time of sighting, ringed seal age class and behavior, and actions taken to mitigate disturbance. In addition the report will include an analysis of the effectiveness of the BMPs recently developed in coordination with NMFS and any proposed updates to the BMPs or Wildlife Management Plan as a result of the encounter. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS.

NMFS is also proposing to require Hilcorp to submit more immediate reports should a marine mammal be unexpectantly killed or seriously injured by the specified activity or a dead or injured marine mammal is observed by a PSO or Hilcorp personnel. These are standard measures required by NMFS; details on reporting timelines and information can be found in the proposed regulations.

LDPI Construction and Operation Reporting

Each day of marine mammal monitoring, PSOs will complete field sheets containing information NMFS typically requires for pile driving and construction activities. The full list of data is provided in Hilcorp's Marine Mammal Monitoring and Mitigation Plan and in the proposed regulations below. Data include, but are not limited to, information on daily activities occurring, marine mammal sighting information (*e.g.,* species, group size, and behavior), manner and amount of take, and any mitigation actions taken. Data in these field sheets will be summarized and Hilcorp will provide a draft annual report to NMFS no later than 90 days post marine mammal monitoring efforts. Hilcorp would also submit an annual acoustic monitoring report no later than 90 days after acoustic recorders are recovered each season. The acoustic monitoring reports shall contain measured dB rms, SEL and peak values as well as ambient noise levels, per the Acoustic Monitoring Plan and as described below in the proposed regulations.

Hilcorp will also submit to NMFS a draft final report on all marine mammal monitoring conducted under the proposed regulations no later than ninety calendar days of the completion of marine mammal and acoustic monitoring or sixty days prior to the issuance of any subsequent regulations, if necessary, for this project, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS.

Negligible Impact Analysis and Determination

Introduction

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'' by mortality, serious injury, and Level A harassment or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

Serious Injury and Mortality

NMFS is proposing to authorize a very small number of serious injuries or mortalities that could occur incidental to ice road construction, use, and maintenance. We note here that the takes from ice road construction, use, and maintenance enumerated below could result in non-serious injury, but their worst potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

In addition, we discuss here the connection, and differences, between the legal mechanisms for authorizing incidental take under section 101(a)(5) for activities such as LDPI construction

and operation, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, PBR, and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA. In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015), which concerned a challenge to NMFS' regulations and LOAs to the Navy for activities assessed in the 2013—2018 HSTT MMPA rulemaking, the Court ruled that NMFS' failure to consider PBR when evaluating lethal takes in the negligible impact analysis under section 101(a)(5)(A) violated the requirement to use the best available science.

PBR is defined in section 3 of 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 (OSP) and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. Through section 2, an overarching goal of the statute is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}), the productivity rate of the stock at a small population size, and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of the minimum population estimate (N_{min}) incorporates the level of precision and degree of variability associated with abundance information, while also providing reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995), typically by using the 20th percentile of a log-normal distribution of the population estimate. In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated, as well as potential bias stemming from lack of knowledge (Wade, 1998).

Congress called for PBR to be applied within the management framework for commercial fishing incidental take under section 118 of the MMPA. As a result, PBR cannot be applied appropriately outside of the section 118 regulatory framework without consideration of how it applies within the section 118 framework, as well as how the other statutory management frameworks in the MMPA differ from the framework in section 118. PBR was not designed and is not used as an absolute threshold limiting commercial fisheries. Rather, it serves as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR in the commercial fishing context under section 118, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. In other words, under section 118 of the MMPA, PBR does not serve as a strict cap on the operation of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent PBR may be relevant when considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny (or issue) incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5), NMFS' long-standing regulatory definition of ''negligible impact,'' and the use of PBR under section 118. The standard for authorizing incidental take for activities other than commercial fisheries under section 101(a)(5) continues to be, among other things that are not related to PBR, whether the total taking will have a negligible impact on the species or stock. Nowhere does section 101(a)(5)(A) reference use of PBR to make the negligible impact finding or authorize incidental take through multi-year regulations, nor does its companion provision at 101(a)(5)(D) for authorizing non-lethal incidental take under the same negligible-impact standard. NMFS' MMPA implementing regulations state that take has a negligible impact when it does not ''adversely affect the species or stock through effects on annual rates of recruitment or survival''—likewise without reference to PBR. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), implicitly acknowledging that the negligible impact standard under section 101(a)(5) is separate from the PBR metric under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the ESA) to add compliance with the new section 118 but retained the standard of the negligible impact finding under section 101(a)(5)(A) (and section 101(a)(5)(D)), showing that Congress understood that the determination of negligible impact and application of PBR may share certain features but are, in fact, different.

Since the introduction of PBR in 1994, NMFS had used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. Prior to the Court's ruling in *Conservation Council for Hawaii* v. *National Marine Fisheries Service* and consideration of PBR in a series of section 101(a)(5) rulemakings, there were a few examples where PBR had informed agency deliberations under other MMPA sections and programs, such as playing a role in the issuance of a few scientific research permits and subsistence takings. But as the Court found when reviewing examples of past PBR consideration in *Georgia Aquarium* v. *Pritzker,* 135 F. Supp. 3d 1280 (N.D. Ga.

2015), where NMFS had considered PBR outside the commercial fisheries context, ''it has treated PBR as only one 'quantitative tool' and [has not used it] as the sole basis for its impact analyses.'' Further, the agency's thoughts regarding the appropriate role of PBR in relation to MMPA programs outside the commercial fishing context have evolved since the agency's early application of PBR to section 101(a)(5) decisions. Specifically, NMFS' denial of a request for incidental take authorization for the U.S. Coast Guard in 1996 seemingly was based on the potential for lethal take in relation to PBR and did not appear to consider other factors that might also have informed the potential for ship strike in relation to negligible impact (61 FR 54157; October 17, 1996).

The MMPA requires that PBR be estimated in SARs and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' as defined in section 3), but nothing in the statute requires the application of PBR outside the management of commercial fisheries interactions with marine mammals. Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI requested to be authorized under 101(a)(5)(A). As noted by NMFS and the U.S. Fish and Wildlife Service in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other factors that could influence annual rates of recruitment or survival.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI from all sources into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate in the SAR), which is called ''residual PBR.'' (Wood *et al.,* 2012). We first focus our analysis on residual PBR because it incorporates anthropogenic mortality occurring from other sources. If the ongoing human-caused mortality from other sources does not exceed PBR, then residual PBR is a positive number, and we consider how the anticipated or potential incidental M/SI from the activities being evaluated compares to residual PBR using the framework in the following paragraph. If the ongoing anthropogenic mortality from other sources already exceeds PBR, then residual PBR is a negative number and we consider the M/SI from the activities being evaluated as described further below.

When ongoing total anthropogenic mortality from the applicant's specified activities does not exceed PBR and residual PBR is a positive number, as a simplifying analytical tool we first consider whether the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR (the ''insignificance threshold,'' see below). If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone (*i.e.,* in the absence of any other take) will not adversely affect annual rates of recruitment and survival. As such, this amount of M/SI would not be expected to affect rates of recruitment or survival in a manner resulting in more than a negligible impact on the affected stock unless there are other factors that could affect reproduction or survival, such as Level A and/or Level B harassment, or other considerations such as information that illustrates the uncertainty involved in the calculation of PBR for some stocks. In a few prior incidental take rulemakings, this threshold was identified as the ''significance threshold,'' but it is more accurately labeled an insignificance threshold, and so we use that terminology here, as we did in the AFTT Proposed (83 FR 10954; March 13, 2017) and Final Rules (83 FR 57076; November 14, 2018). Assuming that any additional incidental take by Level A or Level B harassment from the activities in question would not combine with the effects of the authorized M/SI to exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. However, M/SI above the 10 percent insignificance threshold does not indicate that the M/SI associated with the specified activities is approaching a level that would necessarily exceed negligible impact. Rather, the 10 percent insignificance threshold is meant only to identify instances where additional analysis of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

Where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors (positive or negative), including those outlined above, as well as mitigation is especially important to assessing whether the M/SI will have a negligible impact on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the U.S. EEZ are used to calculate the abundance even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock. M/SI that exceeds PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* which involved the challenge to NMFS' issuance of LOAs to the Navy in 2013 for activities in the HSTT Study Area, the Court reached a different conclusion, stating, ''Because any mortality level that exceeds PBR will not allow the stock to reach or maintain its OSP, such a mortality level could not be said to have only a 'negligible impact' on the stock.'' As described above, the Court's statement fundamentally misunderstands the two terms and incorrectly indicates that these concepts (PBR and ''negligible

impact'') are directly connected, when in fact nowhere in the MMPA is it indicated that these two terms are equivalent.

Specifically, PBR was designed as a tool for evaluating mortality and is defined as the number of animals that can be removed while ''allowing that stock to reach or maintain its OSP.'' OSP is defined as a population that falls within a range from the population level that is the largest supportable within the ecosystem to the population level that results in maximum net productivity, and thus is an aspirational management goal of the overall statute with no specific timeframe by which it should be met. PBR is designed to ensure minimal deviation from this overarching goal, with the formula for PBR typically ensuring that growth towards OSP is not reduced by more than 10 percent (or equilibrates to OSP 95 percent of the time). As PBR is applied by NMFS, it provides that growth toward OSP is not reduced by more than 10 percent, which certainly allows a stock to ''reach or maintain its OSP'' in a conservative and precautionary manner—and we can therefore clearly conclude that if PBR were not exceeded, there would not be adverse effects on the affected species or stocks. Nonetheless, it is equally clear that in some cases the time to reach this aspirational OSP level could be slowed by more than 10 percent *(i.e.,* total human-caused mortality in excess of PBR could be allowed) without adversely affecting a species or stock through effects on its rates of recruitment or survival. Thus even in situations where the inputs to calculate PBR are thought to accurately represent factors such as the species' or stock's abundance or productivity rate, it is still possible for incidental take to have a negligible impact on the species or stock even where M/SI exceeds residual PBR or PBR.

As noted above, PBR is helpful in informing the analysis of the effects of mortality on a species or stock because it is important from a biological perspective to be able to consider how the total mortality in a given year may affect the population. However, section 101(a)(5)(A) of the MMPA indicates that NMFS shall authorize the requested incidental take from a specified activity if we find that the total of such taking *i.e.,* from the specified activity will have a negligible impact on such species or stock. In other words, the task under the statute is to evaluate the applicant's anticipated take in relation to their take's impact on the species or stock, not other entities' impacts on the species or stock. Neither the MMPA nor NMFS' implementing regulations call for consideration of other unrelated activities and their impacts on the species or stock. In fact, in response to public comments on the implementing regulations NMFS explained that such effects are not considered in making negligible impact findings under section 101(a)(5), although the extent to which a species or stock is being impacted by other anthropogenic activities is not ignored. Such effects are reflected in the baseline of existing impacts as reflected in the species' or stock's abundance, distribution, reproductive rate, and other biological indicators.

NMFS guidance for commercial fisheries provides insight when evaluating the effects of an applicant's incidental take as compared to the incidental take caused by other entities. Parallel to section 101(a)(5)(A), section 101(a)(5)(E) of the MMPA provides that NMFS shall allow the incidental take of ESA-listed endangered or threatened marine mammals by commercial fisheries if, among other things, the incidental M/SI from the commercial fisheries will have a negligible impact on the species or stock. As discussed earlier, the authorization of incidental take resulting from commercial fisheries and authorization for activities other than commercial fisheries are under two separate regulatory frameworks. However when it amended the statute in 1994 to provide a separate incidental take authorization process for commercial fisheries, Congress kept the requirement of a negligible impact determination for this one category of species, thereby applying the standard to both programs. Therefore, while the structure and other standards of the two programs differ such that evaluation of negligible impact under one program may not be fully applicable to the other program (*e.g.,* the regulatory definition of ''negligible impact'' at 50 CFR 216.103 applies only to activities other than commercial fishing), guidance on determining negligible impact for commercial fishing take authorizations can be informative when considering incidental take outside the commercial fishing context. In 1999, NMFS published criteria for making a negligible impact determination pursuant to section 101(a)(5)(E) of the MMPA in a notice of proposed permits for certain fisheries (64 FR 28800; May 27, 1999). Criterion 2 stated If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total. This criterion addresses when total human-caused mortality is exceeding PBR, but the activity being assessed is responsible for only a small portion of the mortality. In incidental take authorizations in which NMFS has recently articulated a fuller description of how we consider PBR under section 101(a)(5)(A), this situation had not arisen, and NMFS' description of how we consider PBR in the section 101(a)(5) authorization process did not, therefore, include consideration of this scenario. However, the analytical framework we use here appropriately incorporates elements of the one developed for use under section 101(a)(5)(E) and because the negligible impact determination under section 101(a)(5)(A) focuses on the activity being evaluated, it is appropriate to utilize the parallel concept from the framework for section 101(a)(5)(E).

Accordingly, we are using a similar criterion in our negligible impact analysis under section 101(a)(5)(A) to evaluate the relative role of an applicant's incidental take when other sources of take are causing PBR to be exceeded, but the take of the specified activity is comparatively small. Where this occurs, we may find that the impacts of the taking from the specified activity may (alone) be negligible even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock): The authorized mortality or serious injury would be less than or equal to 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). We must also determine, though, that impacts on the species or stock from other types of take (*i.e.,* harassment) caused by the applicant do not combine with the impacts from mortality or serious injury to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival.

As discussed above, however, while PBR is useful in informing the evaluation of the effects of M/SI in section 101(a)(5)(A) determinations, it is just one consideration to be assessed in combination with other factors and is not determinative, including because, as explained above, the accuracy and certainty of the data used to calculate PBR for the species or stock must be

considered. And we reiterate the considerations discussed above for why it is not appropriate to consider PBR an absolute cap in the application of this guidance. Accordingly, we use PBR as a trigger for concern while also considering other relevant factors to provide a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while acknowledging that it is possible to exceed PBR (or exceed 10 percent of PBR in the case where other human-caused mortality is exceeding PBR but the specified activity being evaluated is an incremental contributor, as described in the last paragraph) by some small amount and still make a negligible impact determination under section 101(a)(5)(A).

A stock-wide PBR is unknown since data is only available for the Bering Sea. However, PBR for ringed seals in the Bearing Sea alone, considering an N_{min} of 5,100. Total annual mortality and serious injury is 1,054 for an r-PBR of 4,046 (Muto *et al.,* 2018), which means that the insignificance threshold is 405. No mortality or serious injury of ringed seals is currently authorized under any other incidental take authorization issued pursuant to section 101(a)(5)(A) of the MMPA. In the case of Liberty, the proposed authorized taking, by mortality, of two ringed seals over the course of 5 years, which equates to 0.4 mortality takes annually, is less than 10 percent r-PBR when considering mortality and serious injuring caused by other anthropogenic sources.

Harassment

Hilcorp requested, and NMFS proposes, to authorize take, by Level A harassment and Level B harassment, of six species of marine mammals. The amount of taking proposed to be authorized is low compared to marine mammal abundance. Potential impacts of LDPI activities include PTS, TTS, and behavioral changes due to exposure to construction and operation noise. The potential for Level A harassment occurs during impact pile driving. As discussed in the *Potential Effects of the Specified Activity on Marine Mammals and Their Habitat* section, PTS is a permanent shift in hearing threshold and the severity of the shift is determined by a myriad of factors. Here, we expect cetaceans to incur only a slightly elevated shift in hearing threshold because we do not except them to be close to the source (especially large whales who primarily stay outside the McClure Island group) and that impact pile driving (the source with greatest potential to cause PTS) would only occur for a maximum of 40 minutes per day. Therefore, the potential for large threshold shifts in unlikely. Further, the frequency range of hearing that may be impaired is limited to the frequency bands of the source. Pile driving exhibits energy in lower frequencies. While low frequency baleen whales are most susceptible to this, these are the species that are unlikely to come very close to the source. Mid-frequency cetaceans and phocids do not have best hearing within these lower frequency bands of pile driving; therefore, the resulting impact of any threshold shift is less likely to impair vital hearing. All other noise generated from the project is expected to be low level from activities such as slope-shaping and drilling and not result in PTS.

Cetaceans are infrequent visitors to Foggy Island Bay with primary habitat use outside of the McClure Islands. Any taking within Foggy Island Bay is not expected to impact reproductive or survival activities as the bay is not known to contain critical areas such as rookeries, mating grounds, or other areas of similar significance. Some ringed seals do lair in Foggy Island Bay; however, the area impacted by the project is small compared to available habitat. Further, to offset impacts to reproductive behaviors by ringed seals (*e.g.,* lairing, pupping), Hilcorp would follow a number of ice road BMPs developed in coordination with NMFS ringed seal experts. Hilcorp would also not impact pile drive during the bowhead whale hunt, thereby minimizing impacts to whales during peak migration periods (we note the peak migratory pathway for bowhead whales is well outside the McClure Islands). Finally, for reasons described above, the taking of two ringed seals, by mortality, over the course of 5 years is not expected to have impacts on the species' rates of recruitment and 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:

- Only two ringed seals are authorized to be taken by mortality over 5 years;
- Any PTS would be of a small degree;
- The amount of takes, by harassment, is low compared to population sizes;
- The area ensonified by Hilcorp's activities does not provide important areas and is a de minimis subset of habitat used by and available to marine mammals;
- Critical behaviors such as lairing and pupping by ringed seals would be avoided and minimized through implementation of ice road BMPs; and
- Hilcorp would avoid noise-generating activities during the bowhead whale hunt; thereby minimizing impact to critical behavior (*i.e.,* migration).

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)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of total taking (*i.e.,* Level A harassment, Level B harassment, and, for ringed seals, mortality) of any marine mammal stock over the course of 5 years, is less than one percent of any population (Table 12).

TABLE 12—AMOUNT OF PROPOSED AUTHORIZED TAKE RELATIVE TO POPULATION ESTIMATES (N_{best})

Species	Stock	Population estimate	Total take	Percent of population
Bowhead whale	Arctic	16,820	12	<1

TABLE 12—AMOUNT OF PROPOSED AUTHORIZED TAKE RELATIVE TO POPULATION ESTIMATES (N_{best})—Continued

Species	Stock	Population estimate	Total take	Percent of population
Gray whale	ENP	20,990	7	<1
Beluga whale	Beaufort Sea	39,258	130	<1
Ringed seal	Alaska	170,000	406	<1
Bearded seal	Alaska	299,174	64	<1
Spotted seal	Alaska	423,625	64	<1

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 sizes of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

As described in the Marine Mammal section of the document, all species potentially taken by Hilcorp's specified activities are key subsistence species, in particular the bowhead whales and ice seals. Hilcorp has proposed and NMFS has included several mitigation measures to address potential impacts on the availability of marine mammals for subsistence use. The AEWC provided comments during the public comment period on the Notice of Receipt of Hilcorp's application and as a member of the peer review panel. NMFS incorporated appropriate mitigation to address AEWC's concerns, including requirements for Hilcorp to remain a signatory to a follow protocols contained with the POC. Hilcorp has also indicated they would abide by a CAA. In addition, mitigation measures designed to minimize impacts on marine mammals also minimize impacts to subsistence users (*e.g.,* avoid impact pile driving during the fall bowhead whale hunt). Hilcorp and NMFS have also developed a comprehensive set of BMPs to minimize impacts to ice seals during ice-covered months. In consideration of coordination with the AEWC, Hilcorp's proposed work schedule (*i.e.,* conducting the majority of work in winter when bowhead whales are not present) and the incorporation of several mitigation measures, we have preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp's LPDI construction and operational activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

The bowhead whale, ringed seal, and bearded seal (Beringia DPS) are listed under the ESA (Table 2). On July 31, 2018, NMFS Alaska Region (AKR) issued a Biological Opinion to BOEM, Environmental Protection Agency (EPA), and U.S. Army Corps of Engineers (USACE) for the permitting of the LDPI Project in its entirety (mobilization to decommissioning). The Biological Opinion concluded construction, operation, and decommissioning of the LDPI would not jeopardize the continued existence of the aforementioned species or adversely modify critical habitat. OPR has requested consultation with NMFS Alaska Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to Hilcorp under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning Hilcorp's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Hilcorp is the sole entity that would be subject to the requirements in these proposed regulations, and the Hilcorp is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151

and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 218

Marine mammals, Wildlife, Endangered and threatened species, Alaska, Oil and gas exploration, Indians, Reporting and recordkeeping requirements, Administrative practice and procedure.

Dated: May 21, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart D to part 217 to read as follows:

Subpart D—Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island

Sec.

217.30 Specified activity and specified geographical region.
217.31 Effective dates.
217.32 Permissible methods of taking.
217.33 Prohibitions.
217.34 Mitigation requirements.
217.35 Requirements for monitoring and reporting.
217.36 Letters of Authorization.
217.37 Renewals and modifications of Letters of Authorization.
217.38–217.39 [Reserved]

Subpart D—Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island

§ 217.30 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp LLC (Hilcorp) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction, maintenance, and operation of the Liberty Drilling and Production Island (LDPI) and associated infrastructure.

(b) The taking of marine mammals by Hilcorp may be authorized in a Letter of Authorization (LOA) only if it occurs within the Beaufort Sea, Alaska.

§ 217.31 Effective dates.

Regulations in this subpart are effective from December 1, 2020, through November 30, 2025.

§ 217.32 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.36, the Holder of the LOA (hereinafter ''Hilcorp'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.30(b) by mortality, serious injury, Level A harassment, or Level B harassment associated with the LDPI construction and operation activities, including associated infrastructure, provided the activities are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.33 Prohibitions.

Notwithstanding takings contemplated in § 217.32 and authorized by a LOA issued under §§ 216.106 of this chapter and 217.36, no person in connection with the activities described in § 217.30 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.36;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.34 Mitigation requirements.

When conducting the activities identified in § 217.30(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) Hilcorp must renew, on an annual basis, the Plan of Cooperation (POC), throughout the life of the regulations;

(2) A copy of any issued LOA must be in the possession of Hilcorp, its designees, and work crew personnel operating under the authority of the issued LOA;

(3) Hilcorp must conduct briefings for construction and ice road supervisors and crews, and the marine mammal and acoustic monitoring teams prior to the start of annual ice road or LDPI construction, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures;

(4) Hilcorp must allow subsistence hunters to use the LDPI for safe harbor during severe storms, if requested by hunters;

(5) In the unanticipated event of an oil spill during LDPI operational years, Hilcorp must notify NMFS of the spill within 48 hours, regardless of size, and implement measures contained within the Liberty Oil Spill Response Plan; and

(6) Hilcorp must strive to complete pile driving and pipeline installation during the ice-covered season.

(b) *Ice road construction, maintenance, and operation.* (1) Hilcorp must implement the NMFS-approved Ice Road and Ice Trail Best Management Practices (BMPs) and the Wildlife Action Plan. These documents may be updated as needed throughout the life of the regulations, in consultation with NMFS.

(2) [Reserved]

(c) *Liberty Drilling Production Island Construction.* (1) For all pile driving, Hilcorp shall implement a minimum shutdown zone of a 10 meter (m) radius from piles being driven. If a marine mammal comes within or is about to enter the shutdown zone, such operations shall cease immediately;

(2) For all pile driving activity, Hilcorp shall implement shutdown zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 217.36. If a marine mammal comes within or is about to enter the shutdown zone, such operations must cease immediately;

(3) Hilcorp must employ NMFS-approved protected species observers (PSOs) and designate monitoring zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 217.36. NMFS may adjust the shutdown zones pending review and approval of an acoustic monitoring report (see § 217.35 Requirements for Monitoring and Reporting);

(4) If a bowhead whale or other low frequency cetacean enters the Level A harassment zone, pile or pipe driving must be shut down immediately. If a beluga whale or pinniped enters the Level A harassment zone while pile driving is ongoing, work may continue until the pile is completed (estimated to require approximately 15–20 minutes), but additional pile driving must not be initiated until the animal has left the

Level A harassment zone. During this time, PSOs must monitor the animal and record behavior;

(5) If a marine mammal is approaching a Level A harassment zone and pile driving has not commenced, pile driving shall be delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone; 15 minutes have passed without subsequent detections of small cetaceans and pinnipeds; or 30 minutes have passed without subsequent detections of large cetaceans;

(6) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (which equates to the Level B harassment zone), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in 217.34(c)(5), has elapsed;

(7) Hilcorp will use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer;

(8) No impact driving must occur during the Nuiqsut Cross Island bowhead whale hunt. Hilcorp must coordinate annually with subsistence users on the dates of these hunts; and

(9) Should an ice seal be observed on or near the LDPI by any Hilcorp personnel, during construction or operation, the sighting must be reported to Hilcorp's Environmental Specialist. No construction activity should occur within 10 m of an ice seal and any vehicles used should use precaution and not approach any ice seal within 10 m.

(d) *Vessel restrictions.* When operating vessels, Hilcorp must:

(1) Reduce vessel speed to 5 knots (kn) if a whale is observed with 500 m (1641 feet (ft)) of the vessel and is on a potential collision course with vessel, or if a whale is within 275 m (902 ft) of whales, regardless of course relative to the vessel;

(2) Avoid multiple changes in vessel direction;

(3) Not approach within 800 m (2,624 ft) of a North Pacific right whale or within 5.6 km (3 nautical miles) of Steller sea lion rookeries or major haulouts; and

(4) Avoid North Pacific right whale critical habitat or, if critical habitat cannot be avoided, reduce vessel speed during transit.

§ 217.35 Requirements for monitoring and reporting.

(a) All marine mammal and acoustic monitoring must be conducted in accordance to Hilcorp's Marine Mammal Mitigation and Monitoring Plan (4MP). This plan may be modified throughout the life of the regulations upon NMFS review and approval.

(b) Monitoring must be conducted by NMFS-approved PSOs, who must have no other assigned tasks during monitoring periods. At minimum, two PSOs must be placed on elevated platforms on the island during the open-water season when island construction activities are occurring. These observers will monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(c) One PSO will be placed on the side where construction activities are taking place and the other placed on the opposite side of the LDPI; both observers will be on elevated platforms.

(d) PSOs will rotate duties such that they will observe for no more than 4 hours at a time and no more than 12 hours in a 24-hour period.

(e) An additional island-based PSO will work with an aviation specialist to use an unmanned aircraft system (UAS) to detect marine mammals in the monitoring zones during pile and pipe driving and slope shaping. Should UAS monitoring not be feasible or deemed ineffective, a boat-based PSO must monitor for marine mammals during pile and pipe driving.

(f) During the open-water season, marine mammal monitoring must take place from 30 minutes prior to initiation of pile and pipe driving activity through 30 minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals must be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior must be monitored and documented.

(g) After island construction is complete but drilling activities are occurring, a PSO will be stationed on the LDPI for approximately 4 weeks during the month of August to monitor for the presence of marine mammals around the island in the monitoring zone.

(1) Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

(i) At least one observer must have prior experience working as an observer;

(ii) Other observers may substitute education (degree in biological science or related field) or training for experience;

(iii) Where a team of three or more observers are required, one observer must be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(iv) Hilcorp must submit PSO CVs for approval by NMFS prior to the onset of pile driving;

(2) PSOs must have the following additional qualifications:

(i) Ability to conduct field observations and collect data according to assigned protocols;

(ii) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(iii) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(iv) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

(v) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(h) Hilcorp must deploy autonomous sound recorders on the seabed to conduct underwater passive acoustic monitoring in the open water season the first four years of the project such that island construction activities, including pile driving, and drilling operations are recorded. Acoustic monitoring will be conducted for the purposes of sound source verification, to verify distances from noise sources at which underwater sound levels reach thresholds for potential marine mammal harassment.

(i) Hilcorp must submit incident and monitoring reports.

(1) Hilcorp must submit a draft annual marine mammal and acoustic summary

report to NMFS not later than 90 days following the end of each calendar year. Hilcorp must provide a final report within 30 days after receipt of NMFS' comments on the draft report. The reports must contain, at minimum, the following:

(i) Date and time that monitored activity begins or ends;

(ii) Description of construction activities occurring during each observation period;

(iii) Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);

(iv) Water conditions (*e.g.,* sea state, tide state);

(v) Species, numbers, and, if possible, sex and age class of marine mammals;

(vi) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from construction activity;

(vii) Distance from construction activities to marine mammals and distance from the marine mammals to the observation point;

(viii) Histograms of the perpendicular distance at which marine mammals were sighted by the PSOs;

(ix) Description of implementation of mitigation measures (*e.g.,* shutdown or delay);

(x) Locations of all marine mammal observations;

(xi) An estimate of the effective strip width of the island-based PSOs and the UAS imagery; and

(xii) Sightings and locations of marine mammals associated with acoustic detections.

(2) Annually, Hilcorp must submit a report within 90 days of ice road decommissioning. The report must include the following:

(i) Date, time, location of observation;

(ii) Ringed seal characteristics (*i.e.,* adult or pup, behavior (avoidance, resting, etc.));

(iii) Activities occurring during observation including equipment being used and its purpose, and approximate distance to ringed seal(s);

(iv) Actions taken to mitigate effects of interaction emphasizing: (A) Which BMPs were successful; (B) which BMPs may need to be improved to reduce interactions with ringed seals; (C) the effectiveness and practicality of implementing BMPs; (D) any issues or concerns regarding implementation of BMPs; and (E) potential effects of interactions based on observation data;

(v) Proposed updates (if any) to the NMFS-approved Wildlife Management Plan(s) or the ice-road BMPs;

(vi) Reports should be able to be queried for information;

(3) Hilcorp must submit a final 5-year comprehensive summary report to NMFS not later than 90 days following expiration of these regulations and LOA.

(4) Hilcorp must submit acoustic monitoring reports per the Acoustic Monitoring Plan.

(5) Hilcorp must report on observed injured or dead marine mammals.

(i) In the unanticipated event that the activity defined in § 217.30 clearly causes the take of a marine mammal in a prohibited manner, Hilcorp must immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS, and to the Alaska Regional Stranding Coordinator, NMFS. Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Hilcorp to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Hilcorp may not resume their activities until notified by NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Description of the incident;

(C) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(D) Description of all marine mammal observations in the 24 hours preceding the incident;

(E) Species identification or description of the animal(s) involved;

(F) Fate of the animal(s); and

(G) Photographs or video footage of the animal(s). Photographs may be taken once the animal has been moved from the waterfront area.

(H) In the event that Hilcorp discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Hilcorp must immediately report the incident to OPR and the Alaska Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (k)(5) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Hilcorp to determine whether additional mitigation measures or modifications to the activities are appropriate.

(ii) In the event Hilcorp discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.30 (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Hilcorp must report the incident to OPR and the Alaska Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Hilcorp must provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Photographs may be taken once the animal has been moved from the waterfront area.

§ 217.36 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Hilcorp may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp must apply for and obtain a modification of the LOA as described in § 217.37.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.37 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.36 for the activity identified in § 217.30(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include

changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.36 for the activity identified in § 217.30(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Hilcorp regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Hilcorp's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.36, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 217.38–217.39 [Reserved]

[FR Doc. 2019–10965 Filed 5–28–19; 8:45 am]

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FEDERAL REGISTER

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The President

Memorandum of May 23, 2019—Agency Cooperation With Attorney General's Review of Intelligence Activities Relating to the 2016 Presidential Campaigns

Federal Register
Vol. 84, No. 103
Wednesday, May 29, 2019

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Title 3—

The President

Memorandum of May 23, 2019

Agency Cooperation With Attorney General's Review of Intelligence Activities Relating to the 2016 Presidential Campaigns

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Director of National Intelligence[, and] the Director of the Central Intelligence Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Agency Cooperation.* The Attorney General is currently conducting a review of intelligence activities relating to the campaigns in the 2016 Presidential election and certain related matters. The heads of elements of the intelligence community, as defined in 50 U.S.C. 3003(4), and the heads of each department or agency that includes an element of the intelligence community shall promptly provide such assistance and information as the Attorney General may request in connection with that review.

Sec. 2. *Declassification and Downgrading.* With respect to any matter classified under Executive Order 13526 of December 29, 2009 (Classified National Security Information), the Attorney General may, by applying the standard set forth in either section 3.1(a) or section 3.1(d) of Executive Order 13526, declassify, downgrade, or direct the declassification or downgrading of information or intelligence that relates to the Attorney General's review referred to in section 1 of this memorandum. Before exercising this authority, the Attorney General should, to the extent he deems it practicable, consult with the head of the originating intelligence community element or department. This authority is not delegable and applies notwithstanding any other authorization or limitation set forth in Executive Order 13526.

Sec. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

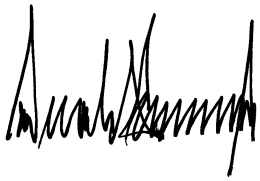
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) The authority in this memorandum shall terminate upon a vacancy in the office of Attorney General, unless expressly extended by the President.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, May 23, 2019

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